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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GRACIE ROBINSON AND JUANITA HAGER, on behalf of themselves and all other persons similarly situated,
Respondents

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS; JULIUS MULLINS, KENNETH L. HOUCK, AND PAUL R. DEAN, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA HEALTH & RETIREMENT FUNDS,
Petitioners

APPENDICES TO PETITION OF UNITED MINE WORKERS OF AMERICA HEALTH & RETIREMENT FUNDS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-2047

GRACIE ROBINSON AND JUANITA HAGER, on behalf of themselves and all other persons similarly situated,
APPELLANTS

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*

Appeal from the United States District Court for the District of Columbia

(D.C. Civil Action No. 77-0698)

Argued September 20, 1979

Decided February 5, 1981

Larry F. Sword for appellants.

Laura A. Kumin, with whom *Timothy J. Parsons*, *William H. DuRoss, III*, and *E. Calvin Golumbic* were on the brief, for appellees.

Before ROBINSON and ROBB, *Circuit Judges*, and DAVIS, *Judge*, United States Court of Claims.*

Opinion for the Court filed by *Circuit Judge* ROBINSON.

Concurring opinion filed by *Judge* DAVIS.

Dissenting opinion filed by *Circuit Judge* ROBB.

ROBINSON, *Circuit Judge:* Trustees of the United Mine Workers health and retirement funds have denied permanent health-care coverage to the surviving spouses of two deceased coal miners. The disappointed claimants challenge the denial as arbitrary, and thus as a violation of Section 302(c) of the Labor-Management Relations Act.[1] The District Court entered judgment for the trustees, finding dispositive the fact that they had acted in reliance upon eligibility rules derived from "explicit, informed and intense" collective bargaining.[2] We hold that the eligibility standards themselves transgress federal law[3] and consequently are forbidden, even as the fruits of labor negotiations.[4] Accordingly, we reverse.

I

Section 302(c) excepts from a general prohibition against nonsalary payments by employers to employees those which are made into a trust fund to provide the latter with health or retirement benefits.[5] The United Mine Workers of America

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*Sitting by designation pursuant to 28 U.S.C. § 293(a) (1976).

[1] Labor Management Relations Act of 1947, § 302(c), 29 U.S.C. § 186(c) (1976) [hereinafter cited as codified].

[2] *Robinson* v. *UMW Health & Retirement Funds*, Civ. No. 77-0698 (D.D.C. June 20, 1978), at 1, Joint Appendix (J. App.) 95.

[3] See text *infra* at notes 24-44.

[4] See text *infra* at notes 45-57.

[5] 29 U.S.C. § 186(c) (1976) reads in relevant part:

> The provisions of this section [forbidding transfers between employer and employees] shall not be applicable . . . (5) with respect to money or other things of value paid to a trust fund

(UMW) first erected such a fund in 1947.[6] Three years later it was replaced by the UMW Welfare and Retirement Fund of 1950, created by the National Bituminous Coal Wage Agreement of that year.[7] That agreement specified that each coal operator participating in the contract would contribute a designated sum for each ton of coal produced, and that the monies would be used for pension and health-care coverage, but left to the trustees the particularization of eligibility requirements for benefits and the amounts thereof.[8]

In 1974, pursuant to a new wage agreement, the 1950 fund was replaced by four trusts. Two of them govern only pension

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established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon . . . and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pension or annuities . . . .

[6] See generally *Van Horn* v. *Lewis*, 79 F.Supp. 541 (D.D.C. 1948).

[7] Record on Appeal (R.) 4, Appendix (App.) C (National Bituminous Coal Wage Agreement of 1950).

[8] *Id.* at 4:

Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the

payments and so are not at issue here. Of the others, the "1974 Benefit Plan and Trust" provides health-care coverage prospectively for miners retiring after the wage agreement became operative on December 6, 1974; and "the 1950 Benefit Trust" replaced the earlier fund with coverage for miners who retired prior to the 1974 date.[9] Unlike their immediate predecessor, these two trusts undertake to limit the trustees' discretion to set eligibility standards. The 1974 wage agreement itself purports to establish the rules,[10] and the trustees are permitted to amend them unilaterally only to ensure compliance with applicable federal laws.[11]

Floyd Robinson and Paul C. Hager were active miners who died before the new trusts were adopted. Both were qualified for pensions by age and length of service, but chose instead to continue working and thus had not retired before their

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"Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

[9] R. 4, App. D (National Bituminous Coal Wage Agreement of 1974) at 27.

[10] *Id.* at 31-33.

[11] *Id.* at 31:

> The Trustees are authorized, upon approval by the Employers and the Union, to make such changes in the Plans and Trusts hereunder as they may deem to be necessary or appropriate.
>
> They are also authorized and directed, after adequate notice and consultation with the Employers and Union, to make such changes in the Plans and Trusts hereunder, including any retroactive modification or amendments, which shall be necessary:
>
> (a) to conform the terms of each Plan and Trust to the requirements of ERISA, or any other applicable federal law . . . .
>
> (d) to comply with all applicable court or government decisions or rulings.

deaths.[12] Appellants, their widows, became eligible, as survivors of working miners, to receive approximately five years of health benefits from the fund then in effect.[13] A surviving spouse of an already retired miner was entitled to about two years of coverage.[14]

Several years later the 1974 wage agreement was adopted. It lengthened the period of benefits eligibility for at least some surviving spouses and dependents. The 1950 Benefit Trust extends *permanent* health-care coverage to the unmarried spouse and dependents of "a miner who dies . . . [p]rior to the effective date of this Plan[15] . . . *at a time when he was receiving a retirement or disability pension* under the eligibility rules" of the predecessor fund.[16] By the trustees' interpretation, this

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[12] When Floyd Robinson died in 1967, pension eligibility was governed by Resolution 63, which required 20 years of employment, attainment of age 55 and one year of "signatory" or "contributory" service—work for an employer who is a signatory to the pension agreement—immediately prior to retirement. Robinson's death occurred five days after his 55th birthday while he was working for a signatory employer and after he had completed 25 years of industry employment, including 21 years of contributory service. J. App. 73-75. At the time of Paul C. Hager's death in 1971, Resolution 83 was in force; it required 20 years of service, attainment of age 55, and a total of five years of contributory employment with one year immediately prior to retirement. Hager had been credited with 24 years of service, all of which was with signatories, and was an active miner at the time of his death. Indeed, Hager had retired for a short period in 1968, but had resumed work because he was unable to support his family and himself on his pension. J. App. 76-78.

[13] When each died, Resolutions 68 and 69 specified the survivor's and health-care benefits due their widows. The surviving spouse of an active miner was to receive a survivor's benefit of $5,000 over a five-year period, and the widow of a retired miner a benefit of $2,000 over two years. R. 4, App. A (Resolution 68). Each was then entitled to health-care assistance while the survivor's benefit was payable. R. 4, App. B (Resolution 69).

[14] See note 13 *supra*.

[15] See text *supra* at note 9.

[16] J. App. 26 (emphasis supplied).

clause applies to survivors of miners who died while collecting pensions and, as well, to survivors of those who, though not actually receiving retirement payments at death, had ceased work and applied for them.[17] This construction, however, excludes widows and dependents of those miners who were eligible for pensions but who continued working and later died before applying for health-care benefits.[18] No such distinction is made in the terms of the 1974 Benefit Plan and Trust; survivors of those dying after December 6, 1974, will receive permanent benefits whether or not retirement actually occurred prior to death.[19]

Appellants were refused permanent health-care coverage because their husbands worked until their deaths, respectively, in 1967 and 1971. On behalf of themselves and all others similarly situated, appellants sued in the District Court, charging that the trustees, by denying them such benefits, had acted arbitrarily and had violated their fiduciary duties, all in contravention of Section 302(c) of the Labor-Management Relations Act.[20] During the course of the proceedings, the court ruled that appellants had made a showing of arbitrariness sufficient to shift the burden of proof to the trustees, and that in the absence of further evidence appellants would be granted summary judgment.[21]

The trustees thereupon submitted documents and oral testimony pertaining to the conduct of the labor negotiations that culminated in the 1974 wage agreement containing the eligibility rules under which they had acted.[22] The court held that this evidence effectively rebutted appellant's prima facie case by

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[17] R. 53.

[18] *Id.*

[19] See note 42 *infra*.

[20] See Brief for Appellants at 4.

[21] *Robinson* v. *UMW Health & Retirement Funds*, 449 F.Supp. 941, 945 (D.D.C. 1978).

[22] See J. App. 98-211 (transcript of proceedings).

establishing that the decision to exclude the appellant class from permanent health benefits was a rational choice consciously made by the participants in the collective bargaining.[23] The court accordingly entered judgment for the trustees, and this appeal followed.

II

Our analysis must begin with an inquiry into the nature of the restrictions statutorily imposed on employee trust funds. Section 302(c) requires that the trusts be maintained "for the sole and exclusive benefit of the employees of [the contributing] employer, and their families and dependents."[24] It also requires that payments be made only for medical care, pensions, compensation for occupational injuries and other like purposes.[25] While the statutory provisions leave trustees with broad discretion to choose among rational alternatives in setting eligibility standards,[26] this court has long held that, because Section 302(c) casts authority to establish benefit programs in fiduciary terms, it forbids arbitrary or capricious decisions by those who administer the funds.[27] We have thus

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[23] *Robinson* v. *UMW Health & Retirement Funds*, *supra* note 2, at 1, J. App. 95.

[24] 29 U.S.C. § 186(c) (1976), quoted in pertinent part *supra* note 5.

[25] *Id.* The relevant portions of the statute are quoted at length in note 5 *supra*.

[26] *E.g.*, *Pete* v. *UMW Welfare & Retirement Fund of 1950*, 171 U.S.App.D.C. 1, 9, 517 F.2d 1275, 1283 (*en banc* 1975); *Roark* v. *Boyle*, 141 U.S.App.D.C. 390, 392, 439 F.2d 497, 499 (1970); *Johnson* v. *Botica*, 537 F.2d 930, 935 (7th Cir. 1976); *Lee* v. *Nesbitt*, 453 F.2d 1309, 1311 (9th Cir. 1971).

[27] *Pete* v. *UMW Welfare & Retirement Fund of 1950*, *supra* note 26, 171 U.S.App.D.C. at 9, 517 F.2d at 1283; *Roark* v. *Boyle*, *supra* note 26, 141 U.S.App.D.C. at 392, 439 F.2d at 499; *Gaydosh* v. *Lewis*, 133 U.S.App.D.C. 274, 277, 410 F.2d 262, 265 (1969); *Roark* v. *Lewis*, 130 U.S.App.D.C. 360, 362, 401 F.2d 425, 427 (1968); *Kosty* v. *Lewis*, 115 U.S.App.D.C. 343, 346, 319 F.2d 744, 747 (1963), *cert. denied*, 375 U.S. 964, 84 S.Ct. 482, 11 L.Ed.2d 414 (1964); *Danti* v. *Lewis*, 114 U.S.App.D.C. 105, 108 & n.3, 312 F.2d 345, 348 & n.3 (1962).

construed this section as demanding at least that the trustees' actions be procedurally fair[28] and that their factual judgments be based on substantial evidence.[29] Beyond this, however, we have consistently held that Section 302(c) also imposes substantive limitations on the nature of the eligibility rules that may be selected.[30] We summarize our reading on the latter score for the assistance it offers to resolution of the issue at bar.

Section 302(c), we repeat, requires trust funds to be held "for the sole and exclusive benefit of the employees of [the contributing] employer."[31] Any rule denying benefits to miners on whose behalf significant contributions to a pension fund have been made appears on its face to contravene this statutory command, and thus calls for satisfactory explanation.[32] This is

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[28] In *Kosty* v. *Lewis*, *supra*, note 27, the trustees had altered the eligibility rules to require that the 20 years of service already prerequisite to a pension be rendered during the 30 years immediately preceding retirement. We held the change arbitrary and capricious in its effect on miners who met the old but not the new standard, since they were not given notice of the change and thus were unable to elect retirement before the new rule became effective and abrogated their pension eligibility. 115 U.S.App.D.C. at 347-348, 319 F.2d at 748-749. Absent any form of notification, we said, the modification lacked the fundamental fairness demanded of those with fiduciary responsibilities. *Id.* Similarly, in *Danti* v. *Lewis*, *supra*, note 27, we rejected as procedurally flawed a decision to deny benefits because the miner's pension application did not demonstrate compliance with an eligibility standard adopted after it was filed, but before it was acted upon, since he thus was afforded no opportunity to show that he qualified under the amended rule. 114 U.S.App.D.C. at 109 n.4, 312 F.2d at 349 n.4.

[29] *Danti* v. *Lewis*, *supra* note 27, 114 U.S.App.D.C. at 108-109, 312 F.2d at 348-349.

[30] See cases cited *infra* notes 32-38.

[31] 29 U.S.C. § 186(c) (1976), quoted in pertinent part *supra* note 5.

[32] *Norton* v. *I.A.M. Nat'l Pension Fund*, 180 U.S.App.D.C. 176, 181-182, F.2d 1352, 1357-1358 (1977), *Roark* v. *Lewis*, *supra* note 27, 130 U.S.App.D.C. at 363, 401 F.2d at 428.

particularly true if, at the same time, the rule grants benefits to others who have worked a considerably lesser period of time for contributing employers.[33] In all such circumstances, we have insisted that the trustees demonstrate some "rational nexus between the Fund's purpose and the [eligibility] requirement."[34] Standards producing otherwise arbitrary discrepancies may be acceptable where the rule discourages workers from taking voluntary action that shifts the burden of supporting the fund to other employees, for instance by retiring early,[35] by leaving the industry,[36] or by working for non-

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[33] Before us in *Roark* v. *Lewis*, *supra* note 27, was an eligibility standard prescribing that a miner must have 20 years of service but must also have retired immediately after a period of work for a signatory—the so-called "signatory last employment" rule—regardless of the total length of contributory employment. We found a prima facie showing of unreasonableness in a demonstration that under this requirement "employees could spend . . . practically their entire adult lives working for mine owners who had contributed to the Fund since its inception; yet if they were to work for a non-signatory operator for any period after leaving a signatory operator, they would forfeit their otherwise valid pension claims." In sharp contrast, other miners could have worked 19 years for a noncontributing employer and yet gain eligibility by only a year of signatory work. 130 U.S.App.D.C. at 363, 401 F.2d at 428. In *Norton* v. *I.A.M. Nat'l Pension Fund*, *supra* note 32, the pension agreement specified that should a signatory employer withdraw from participation, all service credits for his employees would be cancelled, including any earned while contributions were being made. We found it unnecessary to decide whether this provision was *per se* unreasonable, but we noted the similarity of its effects to those of the provisions in *Roark*. 180 U.S.App.D.C. at 181-182, 553 F.2d at 1357-1358. The rule here involved has analogous consequences. See text *infra* at notes 41-44.

[34] *Roark* v. *Lewis*, *supra* note 27, 130 U.S.App.D.C. at 364, 401 F.2d at 429.

[35] See *Gaydosh* v. *Lewis*, *supra* note 27, 133 U.S.App.D.C. at 277, 410 F.2d at 265.

[36] See *Assalone* v. *Carey*, 154 U.S.App.D.C. 69, 73 & n.2, 473 F.2d 199, 203 & n.2 (1972); *Giler* v. *Board of Trustees of Sheet Metal Workers Pension Plan*, 509 F.2d 848, 849 (9th Cir. 1975).

contributing employers.[37] Correspondingly, a differential is permissible when it rewards substantial service rendered employers who assist in maintaining the trust fund.[38]

What we must determine, then, is whether the rules challenged here meet the substantive demands of Section 302(c). Our task is made easier because the District Court expressly held, before receiving evidence describing the collective bargaining process from which the provision emerged, that the new eligibility standards appeared sufficiently arbitrary to compel judgment for the appellant class in the absence of further explanation.[39] None of the rationales offered had convinced the court that the restriction on eligibility complained of reasonably related to the fund's purpose, nor do they satisfy us. We must add, moreover, that we do not find the subsequent presentation to the court any more persuasive.

Like others that we have been forced to overturn,[40] the eligibility rules contested here exclude from permanent health-care coverage survivors of miners with substantial histories of contributory employment, while conferring that coverage on survivors of miners with appreciably less signatory employment. Appellants were themselves denied permanent health benefits despite more than 21 years of signatory employment by each of their husbands.[41] Contrastingly, the eligibility rules qualify survivors of miners with as little as one year of contributory service for permanent coverage so long as their husbands actually retired before death.[42] The facial in-

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[37] See *Roark* v. *Lewis*, *supra* note 27, 130 U.S.App.D.C. at 364, 401 F.2d at 429.

[38] *Pete* v. *UMW Welfare & Retirement Fund of 1950*, *supra* note 26, 171 U.S.App.D.C. at 12-13, 517 F.2d at 1286-1287.

[39] *Robinson* v. *UMW Health & Retirement Fund*, *supra* note 21, 449 F.Supp. at 945.

[40] See notes 32-38 *supra*.

[41] See note 12 *supra*.

[42] This anomaly was produced by the provision, in effect at the time of Floyd Robinson's death, which demanded 20 years of industry

equity of this arrangement is further highlighted by the fact that the husband of one appellant died five days after reaching age 55, having met all requirements and intending to retire but failing to do so within the short period elapsing after his birthday.[43] Additionally, the rules reward those early retirees for whom no further contributions are made into the health-benefit fund. Such a course is surely questionable in terms of statutory purpose.[44]

Nonetheless, the eligibility standards applied by the trustees could have passed muster had they been shown to be rationally related to the fund's purposes.[45] We find no such proof, however. The trustees relied on the fact that they adopted the challenged eligibility rules not as in by-gone days under broad authority granted them in collectively-bargained agreements, but at the specific direction of union and management representatives negotiating the 1974 wage agreement.[46] The District Court accepted this explanation as adequate justification,[47] and we too are sympathetic toward a compromise

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employment but only one year of signatory service, although that one year must have been immediately prior to retirement. J.App. 73-75. We struck down the one-year-signatory-last-employment requirement in *Roark* v. *Boyle*, *supra* note 26, 141 U.S.App.D.C. at 401, 439 F.2d at 508. Although under the rules presently operative, a miner still needs only five years of contributory service, see *Pete* v. *UMW Welfare & Retirement Fund of 1950*, *supra* note 26, 171 U.S.App.D.C. at 9, 517 F.2d at 1283, the disparity in widows' benefits at issue here cannot occur with respect to miners who retire or die after 1974 because the 1974 Benefit Plan and Trust provides permanent health-care coverage prospectively to surviving spouses of all pension-eligible miners, whether or not they retired before death. R. 17, at 4.

[43] See note 12 *supra*.

[44] See text *supra* at notes 30-33.

[45] See text *supra* at notes 34-38.

[46] See *Robinson* v. *UMW Health & Retirement Funds*, *supra* note 2, at 1, J.App. 95.

[47] *Id.*

hammered out by "explicit, informed and intense" bargaining on a problem difficult of resolution in a mutually acceptable manner.[48] But, as we have already seen, Section 302(c) sets substantive limits on the rules established for employee trust funds,[49] as a consequence who formulated the eligibility standards and how it was done are irrelevancies. What is essential is that the eligibility rules themselves not be arbitrary or capricious in content when measured against the governing statute.

We hold that exclusion of the appellant class from permanent health-care coverage was arbitrary.[50] That it was the deed of labor-contract negotiators rather than fund trustees does not excuse it.[51] The Act does not permit bargainers to engage in discriminatory conduct forbidden to trustees; indeed, the statutory provisions operative here were designed especially to control abuses in the collective bargaining process.[52] We ourselves have read the Act as imposing curbs on eligibility definitions in pension plans despite the "presum[ption] that management and labor would agree on pension eligibility require-

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[48] See text *supra* at notes 2, 22-23, *infra* at note 55.

[49] See notes 30-38 *supra* and accompanying text.

[50] See text *supra* at notes 39-44.

[51] See *Toensing* v. *Brown*, 528 F.2d 69, 72 (9th Cir. 1975):

> [T]rustees have a duty to exercise their independent judgment in administering trust funds established under § 302 of the Labor Management Relations Act. Recommendations of collective bargaining parties may be adopted by the trustees in the exercise of their discretion, but such recommendations are not binding or obligatory.

The situation would be different had the negotiators themselves acted on grounds reasonable in light of the requirements of Section 302(c). But we find no acceptable explanations, see text *infra* at notes 55-57, and in the absence thereof the trustees cannot be allowed to pursue eligibility standards solely because the bargainers agreed to them.

[52] *Arroyo* v. *United States*, 359 U.S. 419, 424-427, 79 S.Ct. 864, 867-869, 3 L.Ed.2d 915, 919-920 (1959); *Mosley* v. *National Maritime*

ments."[53] Were we to find rationality in every rule arising from "explicit, informed and intense" bargaining,[54] we would establish a sure means of circumventing statutory restrictions on the entire front of employee trust funds.

Of course, the negotiators may select eligibility rules so long as they can advance an adequate explanation for their action. The only reason appearing on the record, however, is that the bargainers sought to eliminate an additional drain on the fund's resources in order to peg employer contributions at a mutually agreeable level.[55] But "financial considerations by themselves should not be sufficient justification for an exclusive eligibility requirement as *every* exclusive eligibility requirement would have the virtue of saving money."[56] To be sure, actuarial

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Union Pension & Welfare Plan, 438 F. Supp. 413, 421 (E.D.N.Y. 1977) ("an important purpose of [§ 302(c)] was to protect employees from the collusion of union officials and management"). True it is, as the District Court here stated, that "[p]ublic policy dictates the limited role of courts in reviewing collectively bargained agreements." *Robinson* v. *UMW Health & Retirement Funds*, *supra* note 2, at 2, J. App. 97. But the history of employee trusts warns that neither labor nor management can be counted on invariably to represent fully and fairly the employees' interests therein. Blind deference is thus unsafe in reviewing the § 302(c) claims pressed here whether or not, as appellants allege, there was any bad faith on the part of the union negotiators. See Brief for Appellants at 23-24.

[53] *Pete* v. *UMW Welfare & Retirement Fund of 1950*, *supra* note 26, 171 U.S.App.D.C. at 12, 517 F.2d at 1286. Indeed, § 302(c) requires that "the detailed basis on which [benefits] payments are to be made [be] specified in a written agreement with the employer," 29 U.S.C. § 186(c)(5)(B) (1976), and that agreement is almost certain to be bottomed on collective bargaining. *Moglia* v. *Geoghegan*, 267 F.Supp. 641, 646 (S.D.N.Y. 1967), *aff'd*, 403 F.2d 110 (2d Cir. 1968), *cert. denied*, 394 U.S. 919, 89 S.Ct. 1193, 22 L.Ed.2d 453 (1969).

[54] See *Robinson* v. *UMW Health & Retirement Funds*, *supra* note 2, at 1, J. App. 95.

[55] See, *e.g.*, J. App. 126-128, 133-134, 147-149, 184-185.

[56] *Fase* v. *Seafarers Welfare & Pension Plan*, 432 F. Supp. 1037, 1041 (E.D.N.Y. 1977), *aff'd*, 589 F.2d 112 (2d Cir. 1978).

soundness is of legitimate concern to a fund's trustees,[57] but financial integrity must be secured by methods dividing beneficiaries from nonbeneficiaries on lines reasonably calculated to further the fund's purposes. It is not enough that the particular eligibility standards were adopted simply because that enabled resolution of a collective bargaining dispute.

After ample opportunity, no legally acceptable justification for exclusion of the appellant class from permanent health-care benefits has been proffered. It follows that the eligibility rules achieving that end must fail. The judgment appealed from is reversed and the case is remanded to the District Court for determination of the relief properly to be afforded.

So ordered.

DAVIS, *Judge*, concurring: Because the District Court stressed that the rule challenged here was the result of "explicit, informed and intense" bargaining on a difficult problem by labor and management, I think it right for me to spell out in greater detail some reasons why I join the court's opinion and result.

1. I agree, of course, that the health-care eligibility standards must be gauged by the standards of non-arbitrariness and non-capriciousness. The statute provides no other criterion.

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[57] *Roark* v. *Boyle*, *supra* note 26, 141 U.S.App.D.C. at 394, 439 F.2d at 501; *Roark* v. *Lewis*, *supra* note 27, 130 U.S.App.D.C. at 364, 401 F.2d at 429.

The record leaves unclear the financial impact of including the appellant class. There was testimony that the union negotiators felt that there might be an additional 4,000 widows, out of a total population of 40,000, who would thereby receive health benefits, but precise figures were unavailable. J. App. 125. Other testimony suggested the number might be less. J. App. 181, 190-191. The District Court concluded that "[b]oth sides recognized that the magnitude of the [appellant] class could not be practicably determined." *Robinson* v. *UMW Health & Retirement Funds*, *supra* note 2, at 1, J. App. 96. We note, however, that the class is not open-ended, as it includes only survivors of miners who qualified for pensions but died before December 6, 1974, while still in active service. See text *supra* at notes 15-19.

But though the formal rubric is the same, I do not think that the content of the terms arbitrary and capricious is the same under section 302(c) for the 1974 collective bargaining agreement as if those very same eligibility terms had been embodied in a statute enacted by the Congress. Because Congress is the legislature, endowed by the Constitution with law-making authority, courts should give great deference to provisions adopted by the Congress. Congress, moreover, theoretically represents all segments of the people including those groups subordinated or passed over by particular legislation granting benefits; except perhaps for fundamental rights or suspected classes, it is usually hard to see arbitrariness or capriciousness in a Congressional choice at a particular time of recipients for benefits. Private bodies, including a joint group of labor and management conferees, are different. They may not truly represent excluded groups or be interested in those subordinated —and they do not have constitutional powers of legislation. Accordingly, I do not assume that the content of non-arbitrariness or non-capriciousness is the same for the case before us as it would be if Congress had enacted the eligibility standards for miners' or their survivors' health care. On the contrary, I believe that the standard of validity for the private collective bargaining agreement reaches higher than for legislation.

2. The record shows that the mine-operators balked at extended coverage to plaintiffs' class because (a) management was uncertain of and apprehensive about the number of pre-1974 widows in this class, and (b) management did not want to increase the lump amount for health and pension benefits payable per ton. But the record likewise shows that the labor side (a) insisted to almost the very end on including plaintiffs' class and (b) agreed at the last minute, summarily and without giving any reasons, to omit plaintiffs' class because the old contract was just about to expire and, if a general agreement was not reached before that moment, a strike would follow in all probability. So far as I can tell from the record, there was no quid pro quo for the dropping of labor's insistence on inclusion

of this class and no reason was given by labor for omitting this specific class—an overall agreement was reached in great haste to avoid labor conflict. I conclude that there was no reasoned decision by both sides to exclude this group, but rather a deliberate and hurried determination by the labor side to sacrifice this class in order to reach general agreement before the outbreak of overt labor conflict.

3. It is not necessarily an invalidating taint that a particular group has been sacrificed, but it can be if there is no good reason to choose that group and if it is so like others that are included that one seriously wonders why it was selected for the axe. Judge Robinson's opinion points out the close similarity of plaintiffs' group to other which the joint conferees agreed to cover. In particular, widows of eligible but working miners who died after December 6, 1974, receive permanent health care—in contrast to plaintiffs whose husbands were likewise working but eligible for retirement but who happened to die before that magic date. Also, plaintiffs are excluded despite their husband's history of substantial, contributing signatory employment while other survivors are covered although their husbands has appreciably less signatory employment. There seems to be a plain discrimination against a group of miners, working but eligible (for retirement), who died prior to December 1974—and against their survivors.

Why did the labor side, which had pressed for inclusion of this group up to the very last moment, suddenly give up as to this class? It does not seem to be because these miners and survivors had been excluded under the pre-1974 plans. If that were so, coverage would not have been extended to the same class of people whose eligible but working husbands died after December 1974 (*i.e.* in the future).[1] One can suspect that these pre-1974 widows were less important to the union because their miner-husbands were already dead and no longer voting or active in the union. Whether or not this was so, the record

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[1] The December date was chosen because that was the effective date of the 1974 Coal Wage Agreement.

reveals that no reason was given for the sudden concession on this point — no effort to distinguish this group from others similarly placed, no receipt of something (other than [sic] agreement in time to avert a strike) in return for this concession.

4. If, as here, one side of a joint bargaining group is to sacrifice—discriminatorily, it appears on the surface—one of the interests it represents, there must at the least be some adequate reason for choosing that particular group to downgrade. It would not be a sound reason that the excluded group is impotent or less powerful in the union.[2] Here, no other, acceptable reason appears, or has been given, for abandoning at the last minute this specific group in order to attain a timely agreement with the operators. Even if I assume that the union side could truly choose at random to exclude one group in order to contain overall cost and reach agreement in time, there is no showing or reason to believe that plaintiffs' class was selected for dropping by such an indisputably random method. I have to draw the conclusion, therefore, that plaintiff's class was deliberately left out by a process or for reasons which do not meet the standard of non-arbitrariness and non-capriciousness required under section 302(c) for these private-group elibibility standards. There may well have been "explicit, informed and intense" bargaining as a whole, but in the end this particular group was abruptly left uncovered for no acceptable reason and by no acceptable process.[3]

ROBB, *Circuit Judge, dissenting*: I dissent for the reasons stated by the District Court in its unreported memorandum

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[2] Nor would it have been an acceptable reason that the omission of plaintiffs' class would be unlikely to lead to bad publicity in the media. There is an indication in the record that the mine operators agreed, in another connection, to coverage of black-lung cases because they feared bad publicity if that different group were omitted.

[3] This court's ruling can be effectuated through the provisions of the 1974 Coat [sic] Wage Agreement authorizing the trustees to make changes in the plan necessary to conform to any applicable federal law or to comply with applicable court or government decisions or rulings. *See* note 11 of the court's opinion.

and order of June 20, 1978. *Robinson, et al.* v. *United Mine Workers of America Health and Retirement Funds*, C.A. 77-0698 (D.D.C. June 20, 1978). The District Court wrote:

MEMORANDUM AND ORDER

Pursuant to the Court's Memorandum and Order filed April 25, 1978, defendants submitted evidence indicating the intent of the settlors and the circumstances leading to the disputed trust provisions. The evidence is of two forms:

(1) a set of union documents prepared prior to and in the course of the 1974 negotiations (during which the trusts were established), which reflect both the union's initial bargaining position and the emerging status of the benefit provisions in question as negotiations progressed;

(2) the oral testimony of participants in the negotiations, two of whom represented the union and one the coal operators. These witnesses detailed the developments in a subcommittee and at the main bargaining table at various times during which the provisions in question were considered.

The documents and testimony are sufficient to rebut plaintiffs' *prima facie* case. They established clearly that the question of whether or not to provide plaintiffs the benefits they now seek was the subject of explicit, informed and intense bargaining. The union urged provision of permanent health benefits for all survivors of all deceased pension-eligible miners; the operators balked at the anticipated cost. Both sides recognized that the magnitude of the plaintiff class could not be practically determined. The union agreed to forego its demand for permanent health care for plaintiffs in return for other benefits for working miners.

The duties of the trustees in administering the trusts differ distinctly from those of the collective bargainers in negotiating. *See Allied Chemical & Alkali Workers* v.

Pittsburgh Plate Glass Co., 400 U.S. 157, 170 (1971); *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 337–38 (1953); *Miniard* v. *Lewis*, 387 F.2d 864, 865 n.5 (D.C. Cir. 1967), *cert. denied* 393 U.S. 873 (1968). However, unless the discrepancy wrought by the trusts was "arbitrary or capricious in light of all the circumstances involved," *Norton* v. *I.A.M. National Pension Fund*, 553 F.2d 1352, 1356 (D.C. Cir. 1977), the trustees are bound to adhere to the terms of the agreement. In this case their performance cannot be faulted. The decision to limit plaintiffs to five years of health benefits was both considered and rational. Whatever case hindsight gives to its merits, the decision stands as a legitimate product of deliberate and good-faith collective bargaining. There is no requirement that a benefit trust treat all beneficaries identically, *see Toensing* v. *Brown*, 528 F.2d 69, 71 (9th Cir. 1975), and the differentiation here is not manifestly unjust.

Public policy dictates the limited role of courts in reviewing collectively bargained agreements. The familiar history of the anguished relations between the bargaining parties in this case only underscores the delicacy of the balance set in each agreement. Plaintiffs' relief, if indeed any is due, cannot come from the courts.

The Clerk of Court is directed to enter judgment for defendants. The foregoing, together with the earlier opinions of the Court, shall constitute the Court's findings of fact and conclusions of law in this case.

SO ORDERED.

I add only that in my opinion the distinction drawn in the trust agreement between the plaintiffs' class and other beneficiaries was reasonable because of financial considerations and because (1) under the agreement the widow of a deceased active miner receives a death benefit of $5,000 over five years, in addition to health benefits during those years, whereas the widow of a pensioner receives only a $2,500 death benefit in addition to permanent health benefits, and (2) an active miner

earns wages until his death, as opposed to a pension in a lesser amount, so the need of his family for health benefits may not be as great as that of a pensioner's family.

It is not for us to reform the trust agreement to conform to our notions of equity. *See Tomlin* v. *Board of Trustees of Constr. Laborers Pension Trust*, 586 F.2d 148, 151 (9th Cir. 1978).

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1980

CIVIL ACTION 77-0698

No. 78-2047

GRACIE ROBINSON AND JUANITA HAGER, *et al.*
Appellants

VS.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*

Before ROBINSON and MACKINNON, *Circuit Judges*, and DAVIS,* *Judge*, United States Court of Claims.

ORDER

It is ORDERED, by the Court *sua sponte*, that the opinion filed herein by Circuit Judge Robinson on February 6, 1981, be and hereby is amended as follows:

On page 14, continuation of footnote 51, after the last sentence of the paragraph ending with "because the bargainers agreed to them," insert the following:

> That this court has power to review the constitutional and statutory legality of substantive terms of a collective bargaining agreement is beyond dispute. See, *e.g.*, *NLRB* v. *Magnovox Co.*, 415 U.S. 322, 325-327, 94 S.Ct. 1099, 1102-1103, 39 L.Ed.2d 358, 362-363

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*Sitting by designation pursuant to 28 U.S.C. § 293(a) (1976).

(1974); *Brotherhood of R.R. Trainmen* v. *Howard*, 343 U.S. 768, 773-775, 72 S.Ct. 1022, 1025-1026, 96 L.Ed. 1283, 1288-1289 (1952); *Steele* v. *Louisville & N. R.R.*, 323 U.S. 192, 199-202, 65 S.Ct. 226, 230-232, 89 L.Ed. 173, 181-183 (1944).

Per Curiam

For the Court:
/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Entered April 13, 1981.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78–650

GRACIE ROBINSON, *et al.*
Plaintiffs

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*
Defendants

JUDGMENT

This cause having come on for hearing before the Court on June 14, 1978, and after this cause is heard, the Court this 20th day of June, 1978, finds in favor of the defendants, United Mine Workers of America Health and Retirement Funds, et al., against the plaintiffs Gracie Robinson, et al., each side to bear its own costs.

JAMES F. DAVEY
Clerk

/s/ Iva M. Hess
IVA M. HESS
Deputy Clerk

Presiding:
GERARD A. GESELL
Judge

Entered June 20, 1978

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77–0698

GRACIE ROBINSON, *et al.*
Plaintiffs

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*
Defendants

MEMORANDUM AND ORDER

Pursuant to the Court's Memorandum and Order filed April 25, 1978, defendants submitted evidence indicating the intent of the settlors and the circumstances leading to the disputed trust provisions. The evidence is of two forms:

(1) a set of union documents prepared prior to and in the course of the 1974 negotiations (during which the trusts were established), which reflect both the union's initial bargaining position and the emerging status of the benefit provisions in question as negotiations progressed;

(2) the oral testimony of participants in the negotiations, two of whom represented the union and one the coal operators. These witnesses detailed the developments in a subcommittee and at the main bargaining table at various times during which the provisions in question were considered.

The documents and testimony are sufficient to rebut plaintiffs' *prima facie* case. They establish clearly that the question of whether or not to provide plaintiffs the benefits they now seek was the subject of explicit, informed and intense bargaining. The union urged provision of permanent health benefits for all survivors of all deceased pension-eligible miners; the operators balked at the anticipated cost. Both sides recognized that the magnitude of the plaintiff class could not be practicably determined. The union agreed to forego its demand for permanent health care for plaintiffs in return for other benefits for working miners.

The duties of the trustees in administering the trusts differ distinctly from those of the collective bargainers in negotiating. *See Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.*, 400 U.S. 157, 170 (1971); *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 337-38 (1953); *Miniard* v. *Lewis*, 387 F.2d 864, 865 n.5 (D.C. Cir. 1967), *cert. denied*, 393 U.S. 873 (1968). However, unless the discrepancy wrought by the trusts was "arbitrary or capricious in light of all the circumstances involved," *Norton* v. *IAM National Pension Fund*, 553 F.2d 1352, 1356 (D.C. Cir. 1977), the trustees are bound to adhere to the terms of the agreement. In this case their performance cannot be faulted. The decision to limit plaintiffs to five years of health benefits was both considered and rational. Whatever cast hindsight gives to its merits, the decision stands as a legitimate product of deliberate and good-faith collective bargaining. There is no requirement that a benefit trust treat all beneficiaries identically, *see Thensing* v. *Brown*, 528 F.2d 69, 71 (9th Cir. 1975), and the differentiation here is not manifestly unjust.

Public policy dictates the limited role of courts in reviewing collectively bargained agreements. The familiar history of the anguished relations between the bargaining parties in this case only underscores the delicacy of the balance set in each agreement. Plaintiffs' relief, if indeed any is due, cannot come from the courts.

The Clerk of Court is directed to enter judgment for defendants. The foregoing, together with the earlier opinions of the Court, shall constitute the Court's findings of fact and conclusions of law in this case.

SO ORDERED.

/s/ Gerhard A. Gesell
GERHARD A. GESELL
United States District Judge

June 20, 1978.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77–0698

GRACIE ROBINSON, *et al.*
Plaintiffs

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*
Defendants

MEMORANDUM

In this class action survivors of certain deceased coal miners seek an order directing the defendant trustees of the United Mine Workers of America Health and Retirement Funds ("Funds") to pay them permanent health care coverage in the case of spouses and coverage to age 22 in the case of dependents.[1] The class represents all surviving spouses and dependents of deceased miners who satisfied the age and service requirements for pension benefits at the time of death and who

(1) were working in classified service in the coal industry at the time of death and had not applied for a pension, or

(2) had applied for and were eligible to receive pension benefits but were not receiving such benefits at the time of death because of their return to classified service in the coal industry.

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[1] Hereafter referred to simply as "permanent" health care.

The parties filed cross-motions for summary judgment. After oral argument the Court invited submission of additional information. The information has been received, and the case is ready for decision.

The background to plaintiffs' claim is somewhat complex. Pensions and health and death benefits of the mine workers are funded by fixed, per-tonnage royalties paid by the so-called "signatory" coal operators. Prior to December 1974 the benefits were governed by the provisions of the United Mine Workers Welfare and Retirement Fund of 1950 (the "1950 Fund") and by various resolutions promulgated by the trustees of the Fund, who were authorized to establish eligibility criteria. Under this scheme the unremarried surviving spouse and dependents of a deceased working miner eligible for benefits received $5,000 in death benefits and five years of full health coverage. The spouse and dependents of a deceased pension miner received $2,000 and two years of health care.

The National Bituminous Coal Wage Agreement of 1974 (the "1974 Agreement"), negotiated through arduous collective bargaining between the mine workers and the coal operators, dissolved the 1950 Fund and created in its stead four separate trusts (collectively referred to as the "Funds"), all administered by the defendant trustees. The eligibility requirements under these trusts are set out in the trusts themselves. Two of these trusts govern pensions and two cover health and death benefits. This case concerns only the latter.

The two health and death benefit trusts established in 1974 are confusingly entitled the "1974 Benefit Plan and Trust" and the "1950 Benefit Plan and Trust" (the "1974 Trust" and the "1950 Trust," respectively). They govern as follows:

> (a) The 1974 Trust applies to all miners who died after December 1974, whether active or retired. It provides the surviving spouses and dependents of a deceased active miner with permanent health care and a death benefit of $7,500. Where the decedent is a pensioner, the survivors receive permanent health care and $2,500.

(b) The 1950 Trust deals with the survivors of miners already deceased at the time of the 1974 Agreement. It provides survivors of a pension benefit identical to those of a deceased pensioner under the 1974 Trust: $2,500 in death benefits and full health coverage. Survivors of deceased active miners, however, do not receive an equivalent benefit; rather they receive $5,000 in death benefits and only five years of health coverage.

Plaintiffs are all survivors of active miners who died before the 1974 Agreement, and their benefits are governed under (b) above. They claim that the 1950 Trust irrationally denies them the permanent health care enjoyed by the survivors of all other pension-eligible miners, whether active or retired. Had their decedents been pensioners, or had they applied for but not yet received pensions prior to their deaths, or had they died after 1974, members of the plaintiff class could have received permanent, rather than five years' health care. Plaintiffs do not charge the trustees with any failure to carry out the terms of the trust agreements as written; they claim instead that the disparate treatment accorded them by the trusts violates section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. § 186(c)(5) (1970), and section 404(a)(2) of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1104(a)(1) (Supp. V 1975), and consequently that the trustees' failure to reform the trust in their favor constitutes a breach of fiduciary responsibility.[2]

The exclusion of plaintiffs from the permanent health care coverage provided survivors of all other pension-eligible miners requires close scrutiny. But simply because a benefit

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[2] Plaintiffs' additional claim that the trust provisions operate in derogation of vested rights is completely without merit since neither plaintiffs nor their decedents ever had any vested rights to permanent health care.

A claim that the trust provisions violated federal securities laws was dismissed in an earlier opinion. Robinson v. United Mine Workers of America Health and Retirement Funds, 435 F.Supp. 245 (D.D.C. 1977).

trust differentiates among different classes of employees does not of itself mean that the trustees have violated the Taft-Hartley Act or any other law. *See, e.g., Tbensing* v. *Brown*, 528 F.2d 69, 71 (9th Cir. 1975). Under the Taft-Hartley Act and ERISA a trust provision is voidable only if it fails to operate for the "sole and exclusive benefit" of the employees on whose behalf the contributions are made. An arbitrary denial of permanent health care coverage to plaintiffs will not satisfy this standard. *See Burroughs* v. *Board of Trustees of Pension Trust Fund for Operating Engineers*, 542 F.2d 1128 1131 (9th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977); *Pete* v. *UMWA Welfare and Retirement Fund of 1950*, 517 F.2d 1275, 1283 (D.C. Cir. 1975) (en banc); *Roark* v. *Lewis*, 401 F.2d 425, 426-27 (D.C. Cir. 1968); *Morgan* v. *Laborers Pension Trust Fund*, 433 F.Supp. 518, 524 (N.D. Ca. 1977). If an arbitrary denial is shown, the trustees are bound to reform the objectionable provisions in spite of the fact that the eligibility standards are written into the trusts themselves. *See, e.g., Tbensing* v. *Brown*, 528 F.2d 69, 72 (9th Cir. 1975) Indeed, this obligation is reflected in Article XX of the 1974 Agreement.[3]

In attacking the discrepancy, plaintiffs point to several factors. By all estimates the plaintiff class numbers between two and three hundred members and cannot increase in size. The number of survivors already receiving permanent health benefits approximates 35,000 and is growing. The significance of the plaintiff class in comparison to the total pool of permanent health care recipients, combined with the absence of any clear indication that the settlors in 1974 even recognized the discrepancy,[4] suggests to plaintiffs that their omission was unconscious and thus unreasoned. Furthermore, they argue, the

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[3] Article XX provides that the trustees may alter the provisions of the trusts only with the approval of the settlors or where changes are required by "federal laws . . . [or] applicable court or governmental decisions or rulings."

[4] Acting pursuant to the Court's request, defendants have submitted all the information obtainable bearing on the intent of the settlors with regard to benefits for the plaintiff class. Three documents were

discrepancy does not further any legitimate purpose of the Agreement. It does not reward plaintiffs' decedents as much as other pension-eligible miners for the substantial signatory service performed. More significantly, it in effect penalizes skilled and experienced employees who, like plaintiffs' decedents, chose to remain in signatory employment rather than retire. Since the trusts are directly dependent on signatory employment for the resultant payment of per-tonnage royalties, this effect of the discrepancy is curious, to say the least. *Compare Gaydosh* v. *Lewis*, 410 F.2d 262, 265 (D.C. Cir. 1969), *with Lavella* v. *Boyle*, 444 F.2d 910, 913 (D.C. Cir.), *cert. denied*, 404 U.S. 850 (1971).

Plaintiff's showing does not wholly convince the Court of the arbitrariness of the discrepancy, but it does raise a presumption sufficient to shift the burden to defendants. *See Roark* v. *Lewis*, 401 F.2d 425, 428-29 (D.C. Cir. 1968). Pursuant to the Court's request, defendants have endeavored to ferret out from the deliberations of the settlors (at which defendants were admittedly not present) some rationale for the discrepancy. The search has produced none. Although this historical void is not conclusive—for it is the trustees, not the settlors who are defendants—nonetheless the trustees have also failed to establish any persuasive post hoc rationale.

Defendant trustees argue that they did not establish, and thus they are bound to implement, the eligibility provisions agreed to by the settlors in the course of collective bargaining. This substantially misconceives the functions and obligations of the trustees, who represent the interests of the beneficiaries, not the settlors, and, as noted, must under both the terms of the Agreement and established law reform unlawful provisions of the Agreement. Similarly unpersuasive are the arguments, always made in opposition to reformation, that judi-

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produced, none of which demonstrate clearly that the settlors even considered the class. The inference to be drawn from the papers, if any, is that at least part of the class was intended to receive permanent health care.

cial intervention would restrain future collective bargaining efforts and would jeopardize the actuarial integrity of the Funds. As to the first, any incentive toward fair and reasoned bargaining is a beneficial, not an adverse effect of judicial intervention; as to the second, an increase of less than one percent in the number of permanent health care recipients simply cannot be represented as a threat to the fiscal soundness of the Funds.

This is apparently not a case such as *Roark* v. *Lewis*, 401 F.2d 425 (D.C. Cir. 1968), in which an evidentiary hearing would aid in the resolution of the difficult question before the Court. The Court has repeatedly invited the parties to bring forth evidence, oral or documentary, bearing on the intent of the settlors or the rationale for the discrepancy. The parties appear to be agreed that nothing more can be produced. Based on the existing record, the Court can only conclude that defendants have failed to rebut the presumption of arbitrariness raised by plaintiffs. Accordingly, unless by May 12, 1978, defendants indicate to the Court relevant testimony that will be forthcoming from the settlors, summary judgment will be granted plaintiffs and denied defendants, and defendants shall be ordered to reform the trust provisions to equate plaintiffs' health benefits with those enjoyed by the survivors of all other miners who received, had applied for, or were otherwise eligible for pensions.

Defendants argue that if plaintiffs are to receive permanent health benefits, they must be required to repay $2,500 each, representing the excess in death benefits received over that received by the decedents of a pensioner. The Court does not agree. In the first place, it is not at all clear that such money will be owing: survivors of other miners receiving permanent health care coverage receive $7,500 in death benefits. Moreover, the relief in this case, if there is to be any, shall be prospective only, yet many class members may have spent money for health care since their five-year coverage ran out. Finally, it is obvious that many plaintiffs will now be unable to

raise $2,500, and as a matter of equity should not therefore be denied a benefit due.

An Order implementing the foregoing is filed herewith.

/s/ Gerhard A. Gesell
GERHARD A. GESELL
United States District Judge

April 25, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-0698

GRACIE ROBINSON, *et al.*
Plaintiffs

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*
Defendants

ORDER

For the reasons stated in the Memorandum filed this day, defendants shall have until May 12, 1978, to indicate to the Court relevant testimony, if any, that will be forthcoming from the settlors. If no further testimony is indicated, summary judgment will be granted plaintiffs and denied defendants, and

defendants will be directed to submit an appropriate order reforming the Agreement and providing means for notifying the class.

SO ORDERED.

/s/ Gerhard A. Gesell
GERHARD A. GESELL
United States District Judge

April 25, 1978.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1980

No. 78-2047

GRACIE ROBINSON and JUANITA HAGER, on behalf of themselves and all other persons similarly situated,
Appellants

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*

Appeal from the United States District Court for the District of Columbia.

Before: ROBINSON and ROBB, *Circuit Judges*, and DAVIS,* *Judge*, United States Court of Claims.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

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* Sitting by designation pursuant to 28 U.S.C. § 293(a) (1976).

On consideration thereof It is ordered and adjudged by this Court that the judgment _____ of the District Court appealed from in this cause is hereby reversed and the case is remanded to the District Court for further proceedings not inconsistent with the opinion for the Court filed herein this date.

Per Curiam

For the Court:
/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Date: February 5, 1981
Opinion for the Court filed by Circuit Judge Robinson
Concurring opinion filed by Judge Davis
Dissenting opinion filed by Circuit Judge Robb

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1980

No. 78-2047

GRACIE ROBINSON and JUANITA HAGER, *et al.*
Appellants

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*

Before: McGowan, Chief Judge, Wright, Tamm, Robinson, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, Circuit Judges

ORDER

Appellees' suggestion for rehearing *en banc* has been circulated to the full court and a majority of the judges have not voted in favor of the suggestion. On consideration of the foregoing, it is

ORDERED by the Court *en banc* that the aforesaid suggestion is denied.

Per Curiam

For the Court:
George A. Fisher
Clerk

/s/ Robert Bonner
ROBERT BONNER
Chief Deputy Clerk

Circuit Judges Tamm, MacKinnon and Robb would rehear this matter *en banc*.

Entered April 13, 1981

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1980

No. 78-2047

GRACIE ROBINSON AND JUANITA HAGER, *et al.*
Appellants

v.

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*

Before: Robinson and Robb, Circuit Judges; Davis,* Judge, United States Court of Claims

ORDER

On consideration of appellees' petition for rehearing, filed March 6, 1981, it is

ORDERED by the Court that the aforesaid petition is denied.

Per Curiam

For the Court:
/s/ George A. Fisher
GEORGE A. FISHER
Clerk

/s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

*Sitting by designation pursuant to Title 28 U.S.C. § 293(a) (1976)

Circuit Judge Robb would grant the petition for rehearing

Entered April 13, 1981

APPENDIX G

TRANSCRIPT OF HEARING

JUNE 14, 1978

PROCEEDINGS

THE COURT: Good Morning.

THE CLERK: Civil Action No. 77-0698, Gracie Robinson, et al. v. United Mine Workers of America Health and Retirement Funds, et al. Mr. Steven J. Millemann, Mr. Wayne Moore and Mr. Larry Sword for the Plaintiffs. Mr. Timothy J. Parsons, Mr. Henry Ruth and Miss Laura A. Kumin for the Defendants.

THE COURT: I guess the record should show, gentlemen, that following the Court's last memorandum in this matter the Court was advised by counsel for the Funds that there had been some evidence developed that might relate to the interpretation and decision here and, accordingly, this hearing was set to take testimony.

How many witnesses are we going to have?

MR. PARSONS: For the Defendants, we have two, Mr. Pierce and Mr. Haynes.

MR. MILLEMANN: For the Plaintiffs, Your Honor, we have Mr. Bethell.

THE COURT: All right, fine.

I have been assigned in an emergency-situation way to a three-judge election case that is going to take up my afternoon. So I am anxious if possible, without inconveniencing counsel, to complete the testimony this morning.

MR. PARSONS: I think that is possible, your Honor. We will move promptly.

THE COURT: All right, thank you.

You may go ahead.

MR. PARSONS: Your Honor, the Defendants will call Mr. Donald Pierce.

Whereupon—

DON PIERCE

was called as a witness by the Defendants and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PARSONS:

Q. Would you state your name and present address, please.

A. Don Pierce, 33 Grandview, Radford, Virginia.

Q. Who is your present employer?

A. I am self-employed as a consultant.

Q. To what organization are you a consultant?

A. I am working for the United Mine Workers of America.

Q. Mr. Pierce, in 1974, were you employed by the United Mine Workers of America?

A. Yes, I was.

Q. In what position were you employed?

A. In the Research Department as Assistant Director of Research.

Q. In that position, what were your duties and responsibilities?

A. I did economic analysis of energy-related matters for the union; prepared materials for collective bargaining; did analysis of state-of-art of sulphur dioxide control, and other pollution-control equipment and a variety of other financial and economic analysis in a variety of financial and analytic areas.

Q. When did you commence your employment with the United Mine Workers?

A. In March of 1972.

Q. What is your educational background?

A. I have an undergraduate degree in philosophy from West Virginia University and a Master's degree in economics from the University of Michigan.

* * * *

Q. Mr. Pierce, in its initial demands, did the United Mine Workers propose permanent health care for widows?

A. Yes, it did. It proposed something even further than that. It proposed the extension of partial pensions to widows, which would have carried with it attendant health care.

Q. Now did it propose this for widows of certain groups of miners?

A. Yes, it proposed this for a variety of groups of widows: For widows in the future and for widows of miners who had been pensioned in the past but had died, and finally for widows of miners who would have been eligible for pensions save for their failure to retire.

Q. Mr. Pierce, I am going to hand you what has been marked for identification as Defendant's Exhibit Number 2. (Whereupon Memorandum captioned Summary UMWA Proposals and BCOA Counterproposals as of 10/16/74, was marked Defendants' Exhibits No. 2, for identification).

BY MR. PARSONS:

Q. That is a memorandum captioned, Summary UMWA Proposals and BCOA Counterproposals as of 10/16/74. Can you identify that document?

A. Yes, I can. It was one of a number of such summaries that was prepared by the Research Department of, I should say, the staff to the Health and Retirement Subcommittee, detailing

what the current status of negotiations was on various matters in Subcommittee.

Q. Did you participate in the preparation of this document?

A. Yes, I did.

Q. Was that document presented to the BCOA or discussed at negotiations of the Subcommittee?

A. I believe this particular one would have been handed out to the BCOA. There were, as I said, a variety of these, some of which were used internally by the union, but periodically, so the Subcommittee would be aware of just where it stood on a variety of issues, the two sides exchanged documents detailing what they thought the current positions of each were.

Q. Directing your attention to the third page of Defendant's Exhibit No. 2, for identification, does the third page cover the subject of benefits for widows?

A. Yes, it does. At this stage of the bargaining, the Union was still demanding pensions, the extension of pensions of a partial nature for widows and would have also included health care.

Q. If widows had been given a pension, would that have carried with it automatic health coverage?

A. We felt that it would since the Trustees of the Funds had always proceeded to provide in the past health benefits to anyone receiving a pension except for certain exclusions for those earning moneys above a given level.

Q. Specifically once again directing your attention to page 3, does that, to your recollection, set forth the status of the union demand and the industry response on that issue as of that date?

A. To the best of my remembrance, it would. Given the fact that it is dated, I don't recall the two sides had disputes as to the summary prepared by the union as to what their respective positions were.

MR. PARSONS: At this time, Your Honor, I move the introduction of Defendants' Exhibit No. 2 into evidence.

THE COURT: It will be received.

(Whereupon Defendants' Exhibit No. 2. was received in evidence.)

BY MR. PARSONS:

Q. Now, Mr. Pierce, at what time did the industry respond to the union's bargaining demand for health care and pensions and other benefits for widows?

A. Well, I think in its initial response, the one that is in Defendants' Exhibit 1, there is a response to that area; and then continuing thereafter in Subcommittee sessions, the industry would have responded generally serially to the variety of issues outstanding.

It may be the case that in some Subcommittee meetings only one particular area was discussed so that, say, the item of health care for widows would not have come up. But in general the Subcommittee was continuously working and debating all of the union's demands and the industry's counterproposals.

Q. What was the nature of the industry response to the demand for coverage of widows?

A. The industry has no desire to extend initially pensions, of course. Then when the union modified its demand primarily to health care, nor health care to a new class of beneficiaries which had the potential to be as large as that of the past widows of pensioned miners.

THE COURT: Well now, I am looking at this No. 2 at page 3 and I don't see anything relating to this subject matter.

Will you point it out to me?

THE WITNESS: Page 3?

THE COURT: Yes. Counsel directed your attention to page 3 of Exhibit 2 and said, doesn't that show the response.

Which one is it?

MR. PARSONS: It is in the left-hand column, the top half of the page, Item No. 3 which reads:

> "Working or pensioned miners who die prior to effective date of contract: Widow receives $1,000 one-time and retains 85-HS . . ."

Which is the hospital part, which signifies eligibility for health benefits.

". . . until death or remarriage."

THE COURT: But that is the pension plan.

MR. PARSONS: Yes, that is.

THE COURT: That is miners eligible for pension. That is pensioned miners.

MR. PARSONS: The purpose of the examination is to show that that was not the union's initial demand. The union started out broader and then went down to a narrower issue; and there were further negotiations along the course.

THE COURT: You lost me. This doesn't cover the class that we are talking about here, does it?

MR. PARSONS: It is broader than the class.

THE COURT: It is narrower.

MR. PARSONS: To begin with and then it narrows down specifically to the group.

THE COURT: I don't follow you. It doesn't include miners eligible for pension, does it?

MR. PARSONS: Maybe if I . . .

THE WITNESS: Your Honor, if I might speak to that.

THE COURT: I need help.

THE WITNESS: I don't know if I can provide it. In Item (3), working miners who died prior to effective date of contract, if

one looks back at Defendants Exhibit 1, you will see a more detailed description of that group.

That is miners who were working at the time of their death. Item 10 on page 3 would speak to that. And I think there is a further description somewhere within this document.

THE COURT: That says, Extended Coverage for all widows.

We are steamrolling along here and I began to look at the exhibits and I don't follow it.

MR. PARSONS: The point I am attempting to make in my examination, Your Honor, is that the union demand was initially broader than the class we are talking about and would have covered the widows of all miners who died.

THE COURT: You go ahead. It seems to me narrower because it doesn't seem to include this class.

MR. PARSONS: All right, Your Honor. I will pursue this with Mr. Pierce.

THE COURT: You have to develop that some way or another. It doesn't seem to me pensioned miners would include miners eligible for pensions. I would think pensioned miners would be people who had received pensions.

MR. PARSONS: I agree. Let me ask Mr. Pierce.

BY MR. PARSONS:

Q. Did the union's initial demands for health care for widows, did they include a group or as a part of the over-all group the widows of miners who were working at the time of their death but were eligible for pensions?

A. Yes, it did.

THE COURT: And where is that in this Exhibit 2?

THE WITNESS: Well, the words, "working miners", as contrasted with, "or pensioned miners," would have included a demand for health care for those widows of men who would

have been pension eligible save for the fact that they were working at the time of their death.

As a matter of fact, in the union's initial demand, it would have been broader. It would have extended to the widows of men who were working and were service eligible for a pension and not age eligible. That is to say a miner who was fifty-three years of age but had twenty years of service and who died, our initial demand would have included a widow's pension and, of course, the health care that went with it, for his surviving spouse.

BY MR. PARSONS:

Q. During the course of the Subcommittee negotiations, did the union modify its demand with respect to the request for pensions and health care for widows?

A. Yes. The union modified the demand after establishing a structure which provided for a new pension system, part of which would have provided pensions for future surviving spouses and as a matter of course health care, since the union continued to push for the incorporation of past Trustees' resolutions as part of the basis for designing the new structure.

Realizing the large costs which would be involved in extending pensions to this possibly large group of past widows on a retroactive basis, the union dropped the demand in which it had requested partial pensions for that group of individuals and began concentrating on health care for them.

Q. Did the industry respond to this demand by the union?

A. The industry's response was still that they had no interest in increasing the size of that beneficiary class.

Q. The beneficiary class meaning?

A. Of widows for health benefits, for what would have by that time been the group of people who were to be covered under the 1950 Health Trust.

Q. Were there two groups of beneficiaries established for purposes of negotiating benefits?

A. Yes. Reasonably early in the negotiations, the two parties decided that in order to get the Pension Funds and Health Funds on a firm financial footing and also to meet the new requirements of ERISA which has just been passed that a reasonable approach would be to look at past liabilities, that is, existing liabilities in the way of service, and to draw the line with respect to a given date and separate working and pensioned miners by virtue of that time line.

The decision to choose January 1 of 1976, which was the time that was chosen, was one that was based upon giving miners who were currently working a reasonable chance to decide if they wished to participate in the new pension system which would provide substantially larger benefits for them in the way of pensions if they had a large number of years of service rather than to arbitrarily select the effective date of the agreement and preclude some miners who might have many years of service.

The negotiators at the Subcommittee level and at the main table level both realized that choosing any given date might have some degree of unfairness associated with it but that it was a necessity if one was to fix a point in time with respect to liabilities that were accruing as a result of service, particularly with respect to pensions.

Q. Were these two groups known as Group A and Group B?

A. Yes. Since we had not come to an agreement as to what the new Trusts, which were to be a continuation of the old trusts, would be referred to, we generally referred to the two groups of people I have described as Group A and Group B. Usually in capital letters.

Q. Did Group A ultimately become the group of beneficiaries that was covered by the 1950 Pension Trust and the 1950 Benefit Trust?

A. I don't recall if A became the future and B the past. I know there are further documents and that should be clear there.

Q. Are you familiar with the definition of the class in this case?

A. I think I am, yes.

Q. What is your understanding of the definition?

A. As related to me by yourself and from reading His Honor's stipulation, we are speaking of the widows of miners who would have been eligible for a pension save for the fact that they were working at the time of their death. That is to say, miners who were age eligible and service eligible for receiving a pension except for the fact that working in the industry precludes one from receiving a pension.

Q. Now did the union demand in the course of bargaining permanent health care coverage for the widows of such miners?

A. Yes, it did.

Q. What was the industry response to that demand?

A. The industry response was and continued to be, no, throughout the course of negotiations.

I think it is only fair to say, if I may, that in general the union's initial demands, as can be seen by the attachments on Exhibit 1, were very broad; and during the course of Subcommittee deliberations the two parties often defined classes or benefits much more analytically in order to make it possible to discuss what levels of benefits were to be extended and to just to whom they were to apply.

For instance, we talked about disability very broadly and the extension of disability pensions to people who had been disabled in the mines during the period '46 to '74. Gradually it became clear that a better definition of disability was a mine accident, with the union initially insisting on occupational dis-

ease such as black lung being included in the definition of mine disability.

Similarly, with respect to the classes, the industry took the lead in insisting that they be very tightly drawn with respect to time, since the primary criterion for establishing under what Trusts one's benefits were to come was a function of time and further to establish the particular qualifications that were necessary for receiving a benefit such as . . .

THE COURT: Did you ever identify how many people would be in the class?

THE WITNESS: We made attempts to identify the numbers of persons in each of the variety of classes we were discussing, whether it was pensions—

THE COURT: I am interested in this class. Did you ever attempt to determine how many people were in the class or what it would cost?

THE WITNESS: Yes, we did, Your Honor.

THE COURT: Can you recall any of those determinations, as to how many members, how much it would have cost, how many people were in the class?

THE WITNESS: I can try to go through the process we used and give you an idea of the manner in which we attempted to identify them.

We looked at the Funds annual summaries of working miner populations. We looked at mortality tables, both for miners and for women. We looked at what was currently the case with the number of men who were working who were past the current pension age. And using those factors, we made some projections on what the size or the likely size of a population of widows might have been.

Then we made some consideration of the fact that during the '50's and '60's a large number of people left the industry and perhaps went back to work in non-union mines and in many cases never received a benefit.

A large number of that population was, of course, addressed and restored to benefits by widows of the Blankenship decision.

Using those factors, each side independently — each side being the union and the industry—came up with estimates as to what it thought the size of the population would be.

Our feeling at the union was that the general class of widows to whom we wished to extend benefits was somewhere in the neighborhood of 40,000, with a margin of error that was quite large.

The industry thought that that thinking was surely within the range that it had projects, as I recall, but felt that there was a great degree of uncertainty, perhaps more so than the union, since we were not to be the ones to finance the benefit, with respect to ascertaining it.

With respect to the specific sub-class we are talking about, the Funds kept up until that time only manual records on the receipt of death benefits, which would have been the best measure one could have used to identify people who had received a death benefit, were working at the time of their death but would have had the number of years of service requisite for receiving a pension.

However, at that time, unless I am incorrect, it would have been extremely difficult, because of the state of the Funds' records, to have pulled all of those records. Even if one had, he would have faced the fact that there was never the systematic determination of years of service done for those people that was done for a regular retiree.

Since the widow would have submitted an application requesting only a death benefit and the criterion was only that he be working or had worked within a given interval.

So to claim that we did either sophisticated or even very accurate analysis would be incorrect. But we did, by looking at the total numbers involved—at least as I recall, my feeling was, and I did most of the work for the union, that the size of this

class of widows might be as much as ten percent of the 40,000 or perhaps an additional 4,000 individuals.

Realizing—

THE COURT: Was that figure on the bargaining table?

THE WITNESS: I don't recall that we ever advanced it as a number at all.

As a result we looked at this class as maybe adding a small additional amount of money to the total cost of benefits for widows and in itself not a large number.

I don't recall the particular numbers but it would have been somewhere in the neighborhood of ten percent of whatever we saw the cost of widows adding.

Similarly with respect to this particular group especially, neither side argued the case so much on the merits of the exact size of the class. The union, as I recall, argued it largely—I don't know if I should go beyond your request on the numbers—argued the matter of health care for these individuals on an equity basis, that they weren't substantially different from other widows, that while they had received a larger death benefit by virtue of being the surviving spouses of working miners, that the present value, even the present value of that death benefit, if brought forward from fifteen or twenty years ago, was not comparable to what the value of health benefits would be in the future.

The industry, as I recall, argued that with respect to fairness and equity that because the class had been treated differently, it had received the working miner death benefit, that it had no desire to extend further the health card and that, indeed, if one argued for a class such as this, then one could argue for the widows of those who were within one year or two years of retirement.

That is eventually when the union had to realize there would be lines drawn with respect to the classes as well as with respect to time.

We continued, often heatedly, over this particular issue, I remember—

THE COURT: Sort of a camel's nose under the tent argument from the operators. You start doing this, then you can go back and back.

THE WITNESS: Exactly. This is an inference on my part but I also, not having had that much experience in bargaining before, saw it as perhaps this is a class that one looks for in the next round of negotiations, as is the idea of extending the definition of disability.

THE COURT: Eventually it was given up.

THE WITNESS: Yes.

THE COURT: By the Union.

THE WITNESS: Yes.

THE COURT: What did the union get in return for giving it up, if anything?

THE WITNESS: I am not sure you could say the union got a trade-off for any specific item of this sort. We had a variety of people, a wide variety of benefits and new benefits that were being added and extending old benefits to higher levels or longer periods of time.

So that to say, for instance, we gave up this small class or smaller class of widows for an extension of disability care for a certain group of miners, I don't think we ever did that.

The Subcommittee tried to stay away from that, particularly the men who were elected officials, because they, I think, had a natural aversion to trading benefits among potential beneficiary classes and felt that really while they would try to include as many people as possible they never wanted to say, We left you out because we could get them in.

* * * *

Q. Were there discussions at the Subcommittee level of the

union's demand and exploration of the industry's grounds of opposition?

A. Yes, especially towards the end. Since this group didn't proceed as one might often do in collective bargaining, that is, withhold a large number of issues, but rather because of the magnitude of the task of setting up new Health and Retirement Funds, resolved early on a number of structural questions, on the decision to include new groups or to extend benefits, for instance.

I can't be certain but I am sure before this date certain of the provisions of disability care had been decided upon. So that what happened is, as we got nearer to what was an artificial constraint, that is, the expiration of the old agreement, we were increasingly debating the same issues over and over and often, as I said earlier, somewhat passionately.

Q. When you refer to the old agreement, do you mean the National Bituminous Coal Wage Agreement of 1971?

A. Yes.

Q. And what was its expiration date to be?

A. I think it was 12:00 a.m. on November the 12th, '74.

Q. If an agreement was not reached between the parties by that date, would a strike ensue?

A. Well, actually a strike would have ensued if the parties hadn't reached an agreement prior to about ten days before that.

So that the union realized that it was already—there was a strike of possible one and a half to two weeks' duration and there was an attempt then at that time to use this constraint of the actual expiration date to cut short the strike as much as possible.

Finally the union had some feeling that even if it had attempted to reach an agreement ten days prior to the expiration date, that miners would have been skeptical that had bargain-

ing not occurred up until the actual expiration date, the union had not pushed as far as it might have.

Q. What is the significance of the ten-day period prior to the expiration date?

A. The union has a ratification procedure which includes first elected officials approving the agreement; it being sent to the field; and then a voting procedure for rank-and-file miners to speak as to what they think of the agreement.

Q. Mr. Pierce, I am going to hand you what has been marked for identification as Defendants' Exhibit No. 5. (Whereupon Memorandum, Status of Health and Retirement Fund Issues as of November 9, 1974, was marked Defendants' Exhibit No. 5, for identification.)

BY MR. PARSONS:

Q. This is a memorandum entitled, Status of Health and Retirement Fund Issues as of November 9, 1974. Can you identify that document?

A. Yes. It is again another of a series of summaries that were prepared during the period of bargaining. I am sure it is one of the group.

Q. Does this, to your recollection, set forth the status of the issues as of that date, November 9?

A. To the best of my memory, it does.

Q. Directing your attention to Item No. 6, does that cover the demand for health care to widows?

A. Yes, it is essentially a restatement of the items in Exhibit 4. This is a somewhat broader rehash of the shorter group of material in 4.

Q. And that shows as of November 9 that was still an unresolved issue.

A. Yes, it was.

MR. PARSONS: Your Honor, at this time I would move the introduction of Defendants' Exhibit No. 5 into evidence.

THE COURT: It may be received. (Whereupon Defendants' Exhibit No. 5 was received in evidence.)

BY MR. PARSONS:

Q. Mr. Pierce, I am going to hand you now what has been marked for identification as Defendants' Exhibit No. 6.

(Whereupon Memorandum as of 9:00 a.m., November 10, 1974, on Settled and Unresolved Issues in Bargaining was marked Defendants' Exhibit No. 6, for identification.)

BY MR. PARSONS:

Q. This is a Memorandum as of 9:00 a.m., November 10, 1974, on Settled and Unresolved Issues in Bargaining. Can you identify this document?

A. Yes. Again, it is a summary of the outstanding issues that was prepared during the course of the negotiations for the main table bargainers.

Q. Does this memo cover all of the issues that are outstanding as of that date, to your recollection?

A. To my recollection. Given the title of it, I think it would have.

Q. Directing your attention to page 5 of the Defendants' Exhibit No. 6, for identification, page 5 covers, does it not, the status of issues with respect to the Health and Retirement Fund?

A. Yes, it does.

Q. Specifically with regard to Item No. 7, does that, to your recollection, state the status of what was the demand for health coverage of widows as of that date?

A. Yes.

Q. And at that time was it still an open issue that was unresolved?

A. Yes, it was.

Q. Were discussions continuing with regard to that demand at the Subcommittee level?

A. Yes, they were.

MR. PARSONS: At this time, Your Honor, I move the introduction of Defendants' Exhibit No. 6, into evidence.

THE COURT: It may be received.

(Whereupon Defendants' Exhibit No. 6 was received in evidence.)

BY MR. PARSONS:

Q. Mr. Pierce, I am going to hand you what has been marked for identification as Defendants' Exhibit No. 7.

(Whereupon Memorandum, Unresolved Health and Retirement Fund issues as of November 11, 1974, was marked Defendants' Exhibit No. 7, for identification.)

BY MR. PARSONS:

Q. This is a memorandum entitled, Unresolved Health and Retirement Fund Issues as of November 11, 1974? Can you identify this document?

A. Yes.

Q. Is this once again one of the series of memos you have been referring to discussing status?

A. Yes, it is.

Q. Directing your attention to Item No. 4 on the first page of Exhibit 7, does that state what was the status at that time of the union's demand for health card coverage of certain widows?

A. Yes, it is.

Q. And does that show that the demand was still open at that time, being opposed by the BCOA?

A. I am not sure what you mean by the demand. If you mean the demand for the class in question, it does, but it also shows

the BCOA at this date had agreed to include one of the groups which we had been asking for the extension of health care to, the widows of disabled miners, although they wanted to limit the class to mine accident disability. You can note here in the items that the union—this was prepared against as a summary for the main table people—that the UMWA, which in this case would be the feelings or sentiments of the Subcommittee, would be that it could agree to that sort of a definition if we established that the widow was continuing to receive black lung benefits, which I think the law provided. But as I recall, we weren't positive and wanted to check that question out.

THE COURT: Where you say the UMWA could agree to (b), does that mean you were still maintaining your other positions?

THE WITNESS: Yes, it does.

THE COURT: Right.

MR. PARSONS: At this time, Your Honor, I would move the introduction of Defendants' Exhibit No. 7 into evidence.

THE COURT: It may be received.

(Whereupon Defendants' Exhibit No. 7 was received in evidence.)

BY MR. PARSONS:

Q. Now, Mr. Pierce, I am going to hand you a copy of what has been marked as Defendants' Exhibit No. 8, for identification.

(Whereupon UMWA Proposal, 11/13/74 Health and Retirement Benefits, was marked Defendants' Exhibit No. 8, for identification.)

BY MR. PARSONS:

Q. This is a one-page memorandum, headed, Health and Retirement Benefits, UMWA Proposal, and is dated November 13, 1974. Specifically directing your attention to the bottom half of this memorandum, can you identify this document?

A. Yes. Another summary as to what the status of affairs was with respect to the Health and Retirement Subcommittee.

Q. Does it indicate that any agreement had been reached on the question of providing health cards or health care coverage to widows?

A. Yes, it does.

Q. Where is that found on the memo?

A. Six, seven lines from the bottom: "Agreement in principle on 85-HS cards to widows."

Q. Would you relate to us your understanding of what was the agreement in principle as of November 13, 1974?

A. My memory would be that we agreed to extend the health cards or to restore the health cards to the widows of miners who had been pensioned during the period '46 to '74; and further, to extend it to the widows of miners who were disabled during that period but had subsequently died; and further, to extend it to widows of miners who were still alive but on pension that would fall in the old group, that is, the 1950 Trust, upon their death.

Q. By this time had any agreement been reached on the union's demand to provide health care coverage to the widows of miners who were working but eligible for pension at the time of their death?

A. To the best of my knowledge at that time the union had agreed that that group would not be covered.

THE COURT: You agreed to drop it if you had an agreement in principle on the others.

THE WITNESS: Yes.

THE COURT: Right. Were you present when that decision was made? Do you follow what I am trying to get at?

THE WITNESS: Yes, I understand what you are getting at.

THE COURT: If so, I want to know who said what.

THE WITNESS: I am not sure that I can recall the exact sequence of events that transpired. Things were somewhat

chaotic during the period of November, late November 11 through the morning of the 13th, as I recall.

The main table, which had heretofore primarily concerned itself only with the size of the dollar amount necessary to finance benefits, had in its desire to get final agreement and since the number of issues were gradually being narrowed by the Subcommittee, increasingly had Mr. Bethell or myself or both of us appear at the main table meetings. The industry similarly had Mr. Haynes there to resolve what was outstanding between the two parties.

THE COURT: Right

THE WITNESS: And from that, of course, became familiar with the outstanding issues themselves. While the Subcommittee had continued to brief the main table—and I don't recall the last briefing date as to what was outstanding—because of these summaries the main table was, of course, apprised of where things stood.

I am not sure that I was present when the main table people decided: We can live with what the BCOA has offered both in the way of moneys and the understanding on their part, from Tom Bethell and myself, that the people that had been proposed and agreed to up to that time by the BCOA could be properly funded by the amounts that had been discussed at the main table.

I can't recall any specific discussion at that moment. There would have been a number of times in which, of course, people were very strongly torn between realizing that some group of individuals, whether it be disabled or a sub-group of widows, might not receive coverage or complete coverage.

THE COURT: You can't really remember what was said.

THE WITNESS: I can't recall any specific conversation.

THE COURT: All right.

THE WITNESS: The main table acted largely to clean up a large number of issues, as I recall, to accept an industry proposal right at the very end.

BY MR. PARSONS:

Q. To your recollection, was there any relationship between the resolution of the issues of widows and the resolution of any other issue pertaining to the Health and Retirement Fund?

A. Would you restate that, please.

MR. PARSONS: Could you read that question back, please.

(Whereupon the pending question was read by the reporter.)

THE WITNESS: Other than the general idea that if we could agree to the groups of widows that were to receive benefits, that is, those of already pensioned miners or disabled miners or future pensioned miners, and agree to exclude the other group, that we had an agreement on that general area, no.

You mean, was there a decision: O.K., we will trade off this group of people for some benefit or for some larger pension amount. No, I don't recall any tradeoff of that sort.

Q. Just to pursue this a little further, was there any relationship between the resolution of this issue and the agreement or final agreement on the amount of the royalty to be paid into the fund?

A. Yes. Since the industry and ourselves, while we had some minor dispute as to, for instance, how much would be left over for a margin of error or surplus amount in the various Funds, the industry particularly was pushing hard the idea that the level of $1.55 or equivalent in tonnage amounts that the classes they proposed were all that could be covered.

Prior to that we had discussed including sickness and accident benefits in the Health and Retirement Funds. Very late in the bargaining the union agreed to take that benefit out and make it a private insurance benefit.

So an earlier aim of the union at $1.60 got reduced to the $1.55 level. There was some concern and some dissension among the members of the Health and Retirement Subcommittee and the staff whether or not, if we held out further, it might not be possible to get a few more cents for additional benefits and whether or not that money would have been applied, say, to this class or to an additional few dollars of benefit for pensions, or some other area.

I don't recall. But I know there was a feeling that we could hold out for more. But the main table people felt that this particular area—or at least I assume they did; I can't speak for them—but that this particular area of people and benefits and the amounts to finance it were satisfactory as a part of the total economic package.

Q. When the agreement was reached as to the amount of the royalty, were there any further negotiations on benefits to be provided to various groups?

A. Well, other than the inevitable problems which arise when you are trying to write Trusts and Plan documents and define people, there were not substantial new proposals by the union, but the selection of a date, or the exact definition of a term, sometimes it would or would not include certain groups of people, depending on how it was drafted.

So that continued up until the time that the Plan and Trust documents were finished.

* * * *

MR. PARSONS: Defendants will call Mr. Roger Haynes to the stand.

WHEREUPON—

ROGER HAYNES

was called as a witness by the Defendants and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PARSONS:

Q. Would you state your name and present address, please?

A. Roger Haynes, 2425 John Oaks Drive, Pittsburgh, Pennsylvania.

Q. Who is your present employer?

A. Consolidation Coal Company.

Q. What position do you hold with Consolidation Coal Company?

A. I am Vice-President for employee relations.

Q. What are your duties and responsibilities in that position?

A. I am responsible for compensation and benefits, development of training, management development, professional placement, communications, general personnel functions.

Q. Did you hold your position of vice-president for employee relations in 1974?

A. Yes, I did.

Q. In 1974, did you participate in the negotiations of the National Bituminous Coal Wage Agreement during that year?

A. Yes, I did. I was chairman of the BCOA Benefit Subcommittee on Benefits Negotiations.

Q. Had you prior to 1974 participated in the negotiations of previous National Coal Wage Agreements?

A. Yes, I was in the same participation on the Subcommittee in 1970 negotiations.

Q. Did you participate in the most recent negotiations of the Coal Wage Agreement?

A. Yes, I did.

Q. Were you once chairman of the Benefits Subcommittee For BCOA?

A. Yes, I was.

Q. In addition to your participation, focusing on 1974, in the Benefits Subcommittee, did you also participate in the main table bargaining sessions?

A. Yes, I did.

Q. In what capacity?

A. Well, as chairman of the BCOA Benefits Subcommittee, when benefits were discussed at the main table, I was at the main table, as was someone from the union. In addition to that, I became involved in the costing and the financial analysis of the program, assisting Guy Farmer at the main table.

Q. When you spoke of your participation in the costing, was that of the over-all economic package?

A. Yes, it was.

Q. That included wages and other benefits in addition to Health and Retirement Fund contributions?

A. Yes, it did.

Q. Mr. Haynes, could you briefly describe for us what is the Bituminous Coal Operators Association?

THE COURT: Oh, really.

MR. PARSONS: You don't need that.

THE COURT: I think I know enough about that to pass that over, if counsel don't mind.

MR. PARSONS: Thank you, Your Honor. We will move right along.

BY MR. PARSONS:

Q. In focusing on the period prior to the commencement of the negotiations in 1974, did the Benefits Committee of the

BCOA undertake any preparations prior to those negotiations?

A. Yes. The Benefits Committee of the BCOA is a standing committee and has been since the latter part of 1969. We meet regularly, generally about once a month, sometimes more frequently, and have since that time.

So from the time the UMWA had their convention—I think it was sometime in the late fall of '73—we knew generally, as a result of publicity from that convention, the types of things that probably would be demanded. We started preparing and developing costs and estimates and putting statistics together, setting our own objectives.

Q. In the course of this preparation, did the BCOA develop any objectives of its own in the bargaining with respect to health benefits?

A. Yes, we did.

Q. Could you briefly describe for us what those objectives were?

A. We recognized the ERISA was one of the new requirements, that we were going to have to fund a pension plan. Up to this point in time, there was no funding on the Pension Plan. It was pay-as-you-go. We knew that this was going to have to be funded.

We had come to the conclusion that it was important for us, in addition to negotiating the contribution rate or the royalty rate, that we negotiate the actual benefit levels and the eligibility for the benefits.

We had never negotiated up to this time a written document or the actual Plans, specifying who was eligible and who was not eligible and specifying what the level of benefits was. This was one of our primary objectives. We knew that this was an horrendous task.

So we set as our primary objective to get the Pension Plan done during the '74 negotiations. Our objective was in every

way we could possibly maintain a containment of the benefit level and eligibility of people under the already very liberal medical program.

Q. Between the objectives you had with regard to the pensions and the objectives with regard to the medical program, which if any had a higher priority?

A. Well, the priority for getting the pensions straightened out and getting the funding going on that, and trying to arrive at a system by which we could have a competitive industry-wide type of a pension program for our current workers was very important to us and an absolute necessity as far as the financing from the funding point of view was required. So this was our first priority.

Of course, we also always have to keep in mind that it is a necessity for us to be sure that whatever we negotiate in benefits, however we write the Plans, and so forth, is a tax deduction, contributions are tax deductible as a business expense.

There were a great deal of inconsistencies as far as benefit levels were concerned in the Funds, as far as medical programs were concerned, and we felt as though that would be a hopeless task to be able to get the Pension Plan and the Benefit Plan written in one negotiation. So our primary objective with respect to the benefits, that is the health and medical, was to contain it and not expand it.

Q. What was the authority of the BCOA Benefits method of financing?

A. The objective was to create a more equitable financial structure between the underground operators and surface operators which have a big difference in level of productivity.

* * * *

THE COURT: Do you remember discussions about this class?

THE WITNESS: Yes, I do.

THE COURT: Involved in this lawsuit?

THE WITNESS: Yes, I do.

THE COURT: What do you remember about that?

THE WITNESS: Well, essentially, there were three major issues, major economic questions: One was the widows in general, all of the historical widows, what we call the 1950 people. We didn't know a great deal about how many there were but we had already discovered that we weren't very good estimators from the standpoint of how many there were.

Some 26,000 pensioners had been added under *Blankenship* which came as a real shock to us as to how many people were out there in the woodwork, what we call the woodwork.

The way the Funds had operated, it wasn't necessary for them to keep record at all until such time as someone came in and applied for a pension. Since, roughly, through the early '50's, early '60's, we had 500,000. It had dropped down to 130,000 people.

We knew that there was a huge reservoir of unknown. Some widows, even today, from the standpoint of potential future 1950 pensioners, we don't know. Many actuaries are trying to estimate that and don't know, don't know how to come to it. We know that there is bound to be a lot of widows. It was just in the crudest terms of trying to come up with how many might be there. But we knew it was large and, therefore, very expensive.

We knew the number of 1950 pensioners and we projected that with some unknowns on the woodwork people. But we knew that that dollar amount was a huge liability. Every ten-dollar increase in the 1950 pensioner level was a huge unfunded liability with in effect nobody working to contribute in their behalf, all used up as it went. So we had some real financial problems in this area. The unknowns of these widows. We had not agreed to any coverage for widows or any expansion for

coverage of widows historically. We did agree for future widows under the 1974 Pension Plan, 1974 Benefits Plan. But the entire widow question was one of the areas we hadn't agreed to at all.

The black lung differential is one of the areas we had not agreed to. We had not agreed to come to an agreement on the level of the pensioner death benefit. These were items our Subcommittee never did agree to. There were items that went to the main table and ultimately became part of the main table decisions, what they agreed to at the main table.

THE COURT: Were you at the main table when the decision was made not to include this particular class of widows?

THE WITNESS: Yes, I was.

THE COURT: What do you recall about the discussion on that?

THE WITNESS: Well, we had reached that point in our negotiations where it became quite clear to those people who were involved that one of the union's bottom lines, one of the things that was uncompromisable as far as they were concerned was doubling of the contribution rate or reaching the $1.60, which they had publicly done a great deal of advertising on.

We had already agreed to the S & A benefits, which was the equivalent of about five cents a ton. So the figure became $1.55. We weren't at $1.55 from a cost point contribution according to our estimate. We were at about $1.46.7 or .47, or somewhere in that range and we were on strike.

Mr. Yablonski made a very emotional and moving speech during the sessions that $1.55 was going to be it, period. So our people evaluated that and came back and made a counter-proposal which would bring us—we were anxious at this time to get the benefits thing wrapped up and not a part of the remaining issues—we made a counter-proposal to come back and cover specifically the widows of 1950 pensioners.

We wanted to resolve the issue of death benefits at $2,500, not $3,000. We wanted full agreement on our method of financing, the man-hour hourly rate and the tonnage rate. We wanted recognition for the black lung differential. I think we offered the benefits for the widows of the 1950 pensioners and we offered to increase, I believe, it from $195 a month to $200 a month.

We made that offer after being in caucus overnight or something of that nature. The union took it, caucused, came back the next meeting and accepted it.

In accepting it, we finalized our negotiations on that aspect.

THE COURT: You finalized it in that way rather than a specific discussion of this particular issue. A limited offer was accepted.

THE WITNESS: That is right. They had it divided into three types or three issues of widows. We specifically came back and made an offer on the widows of the 1950 pensioners and they accepted that counter-offer that we made.

Once we had the $1.55 accepted at the main table, then the only work remaining was for our Subcommittee to finalize the documents.

THE COURT: Drafting.

THE WITNESS: Drafting.

THE COURT: Right.

MR. PARSONS: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. MILLEMANN:

Q. Mr. Haynes, I believe you made reference to the fact that when discussing the plaintiff class, as to what size you thought they were—could you please just briefly tell me your understanding of who is included in the plaintiff class in this case?

A. My understanding is, it is those widows of miners who were working prior to the '74 negotiations, who would have been eligible for a pension on the date of their death.

Q. Would that include—

A. Eligible to receive a pension.

Q. Thank you.

A. A vested right.

Q. To the best of your recollection, looking back on your and the Subcommittee's use of the term, "working but eligible," which I assume is the group we are talking of, would that group, in your opinion, sir, have included the widow of a miner who reached age fifty-five, had the years of service, became sick, stopped working and died without ever returning to work and without ever applying for a pension?

Would the working but eligible classification include that widow?

A. Yes.

Q. It would?

A. You essentially would only have two classifications: Either the person receiving a pension or the person not receiving a pension.

Q. I believe you said, and correct me if I am wrong, you had some concerns about the size of this working but eligible group but you knew it was large, is that correct?

A. That is right.

Q. How did you know it was large?

A. We had already been through the *Blankenship* area where we had 68 or 69 thousand pensioners and there were a general group of people who felt as though the *Blankenship* numbers wouldn't be large. Who they were, I don't know. We didn't know. But it turned out to be 26,000 people.

Q. O.K.

A. And we learned that there is an awful lot of people out there in the woodwork that nobody knows about.

Q. Besides this bad experience in finding out in another case with another class that there were more than you thought, did you have any other reason to believe it was a large group?

A. Yes. We had 500,000 people working in the mines in the early '50's, late '40's and early '50's. At that time the vast majority of the mines were UMWA-represented mines. That is a large number in relationship to the numbers of active people and the number of people covered in our benefit program. We had at that time close to 80,000 pensioners.

Q. So in a sense, there were a whole lot of people working out there in the '50's, is that what you are saying?

A. We knew something had happened to them.

THE COURT: Had been working.

BY MR. MILLEMANN:

Q. Anything else besides the concern about the *Blankenship* experience and the fact that there were 500,000 people in the coal fields in the '50's?

A. We estimated that in this pensioner widow class—I heard Don talk about 40,000—we estimated a minimum of 25,000 and perhaps a maximum of 50,000.

Q. So you gave yourself a 25,000 margin of error on that one.

A. We sure did.

Q. O.K. Now, was one of your priorities going into the negotiations to reward employees who kept working with signatory employers after age fifty-five?

A. Yes. The new '74 Pension Plan is designed as an incentive. The longer you work the higher your pension.

Q. In fact, isn't part of the reason of the quantifiability problem as to the Plaintiff class here the fact that these widows' husbands did in fact work after age fifty-five, many of them with signatory employers and did contribute massive amounts of—

MR. PARSONS: I object to that. The class is not limited to who were working in signatory employment at the time of their death.

MR. MILLEMANN: I didn't mean to imply it was.

THE COURT: I know it isn't.

MR. MILLEMANN: May I go ahead?

THE COURT: You can ask the question.

BY MR. MILLEMANN:

Q. My question, Mr. Haynes, is did you consider the fact, in light of your priority to reward signatory service after age fifty-five, that at least some of the deceased husbands of the Plaintiff class of widows in fact did keep working after fifty-five and in fact did keep working with signatory employers and that is why they hadn't retired and applied when they died?

Was that a consideration that entered your minds at the time?

A. No, our consideration was reacting and responding to the demands of the union.

Q. O.K.

THE COURT: You were pricing an expanding group of demands.

THE WITNESS: That is right. We were trying to respond and meet, to the degree they fitted into the over-all economic package of the negotiations, the demands of the union.

BY MR. MILLEMAN:

Q. Thank you.

Is that your recollection, also, sir, that a reserve amount was left, was negotiated into the 1950 Benefit Trust to cover unknown contingencies?

A. There were a lot of unknowns and we tried to build in sufficient cushions where it wouldn't go broke. It turned out that we weren't good enough at that and, of course, we did go broke.

We were estimating rise in inflationary medical costs at about twelve and a half percent. At this point in time, in 1974, we were very alarmed that we might not be estimating it anywhere near high enough.

* * * *

APPENDIX H

AFFIDAVIT OF ROBERT T. BOYLAN

Robert T. Boylan, being duly sworn, hereby deposes and says:

1. I am presently employed as Director of Eligibility Services for the United Mine Workers of America Health & Retirement Funds.

2. I have been employed by the Funds and their predecessors in various capacities since 1948. Most of my responsibility since that time has been connected with eligibility requirements for the various benefits provided by the Funds.

3. I am generally familiar with the facts of this case. I make out this affidavit in support of Defendants' Motion for Partial Summary Judgment.

4. The 1950 Benefit Plan and Trust, established December 6, 1974, provided for the first time permanent health care coverage for widows of retired miners receiving Funds' pension benefits who retired on or before December 31, 1975.

5. At the time of the deaths of the husbands of Gracie Robinson and Juanita Hager, Resolution No. 68 of the United Mine Workers of America Welfare and Retirement Fund of 1950 ("the 1950 Fund") governed the payment of death benefits to widows of deceased employees of signatory coal operators. That Resolution provided for the payment of $5,000 to widows of miners regularly employed in classified jobs at the time of death. Payments were, under the terms of the Resolution, made over a period of approximately five years. Under the Resolution, widows of miners receiving pensions at the time of death were entitled to $2,000 upon the death of their husbands to be paid over a period of approximately two years. A true and correct copy of Resolution 68 is attached hereto as Appendix A.

6. At the time of the deaths of the husbands of Gracie

Robinson and Juanita Hager, Resoulution No. 69 of the 1950 Fund governed the eligibility for health benefits of widows of deceased employees of signatory coal operators. That Resolution provided health care coverage to widows of active miners upon their death for the period of the payment of death benefits in the amount of $5,000 which extended over a period of approximately five years. Widows of pensioners likewise received health care coverage for the period of the payment of death benefits in the amount of $2,000 which extended over a period of approximately two years. A true and correct copy of Resolution 69 is attached hereto as Appendix B.

7. Each named plaintiff was paid the sum of $5,000 in death benefits pursuant to Resolution 68 upon the death of their husbands. They received, under the terms of Resolution No. 69, health care coverage for a period of approximately five years. They were found eligible for these benefits on the grounds that their husbands were active miners immediately prior to the deaths. Had they been deemed pensioners, they would have received $2,000 in death benefits and health care coverage for a period of two years. At the time of their deaths, they were age eligible for pensions and had completed a sufficient number of years of service to qualify for pensions.

8. Contributions to the 1950 Fund were made by signatory coal operators per each ton of coal produced for use or for sale. No contributions to the Fund were made by individual miners.

9. Under the 1950 Fund, the level of pension benefits authorized by the Trustees was uniform for all pensioners. The amount of signatory service performed by a pensioner had no effect on the amount of his pension.

10. The 1950 Fund was organized on a "pay-as-you-go" basis which meant that benefits paid to various beneficiaries were paid by and large out of the yearly contributions to the Fund by signatory operators.

11. A true and correct copy of the National Bituminous Coal Wage Agreement of 1950 is attached hereto as Ap-

pendix C.

12. A true and correct copy of the National Bituminous Coal Wage Agreement of 1974 is attached hereto as Appendix D.

13. A true and correct copy of the UMWA 1950 Benefit Plan and Trust is attached hereto as Appendix E.

APPENDIX I

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950

EFFECTIVE MARCH 5, 1950, TO JUNE 30, 1952

EXECUTED AT WASHINGTON, D.C., MARCH 5, 1950

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

A. It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a Fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this Agreement, there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30¢) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale. Such Fund shall have its place of business in Washington, District of Columbia, and it shall be operated by a Board of Trustees, one of whom shall be appointed as a representative of the Employers, one of whom shall be appointed as a representative of the United Mine Workers of America and one of whom shall be a neutral party, selected by the other two. In the event of resignation, death, inability or unwillingness to serve of the Trustee appointed by the Operators or the Trustee appointed by the United Mine Workers of America, the Operators shall appoint the successor of the Trustee originally appointed by them and the United Mine Workers of America shall appoint the successor of the Trustee originally appointed by it.

The Operators signatory hereto do hereby appoint Charles A. Owen, of New York City, as their representative on said Board of Trustees. The United Mine Workers of America do hereby appoint John L. Lewis, of Washington, D.C., as its representative on said Board of Trustees. It is further stipulated and agreed by the joint contracting parties that Josephine Roche, of Denver, Colorado is appointed as the

neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Fund herein created.

In the event of a deadlock on the designation or agreement as to any future neutral Trustee, an impartial umpire shall be selected either by agreement of the two Trustees, representatives of the contracting parties hereto, or by petition by either of the contracting parties hereto to the United States District Court for the District of Columbia for the appointment of such an impartial umpire, all as made and provided in Section 302 (c) of the "Labor-Management Relations Act, 1947."

It is agreed by the contracting parties hereto that the Trustees herein provided for shall serve for the duration of this contract and as long thereafter as the proper continuation and administration of said trust shall require.

It is agreed that this Fund is an irrevocable trust created pursuant to Section 302 (c) of the "Labor-Management Relations Act, 1947," and shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments from principal or income or both, of (1) benefits to employees of said Operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302 (c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the Trustees including the making of any or all of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their families and dependents, and to employees of the Operators other than those exempted from this Agreement; and (5) bene-

fits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947." Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the payments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder.

It is further agreed that the detailed basis upon which payments from the Fund will be made shall be resolved in writing by the aforesaid Trustees at their initial meeting, or at the earliest practicable date that may by them thereafter be agreed upon.

Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust and that no benefits or moneys payable from this Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. The moneys to be paid into said Fund shall not constitute or be deemed wages due to the individual mine worker, nor shall said moneys in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, i.e., the beneficiaries of said Trust under the terms of this Agreement.

The obligation to make payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" under this contract shall become effective on March 6, 1950, and the first actual payments are to be made on April 10, 1950, and thereafter continuously on the 10th day of each succeeding calendar month covering the production of all coal for use or sale during the preceding month.

It is stipulated and agreed by the contracting parties hereto that the Trustee designated by the United Mine Workers of America shall be the Chairman of the Trustees of the Fund provided for in this Agreement.

It shall be the duty of the Operators signatory hereto, and each of them, to keep said payments due said Fund, as hereinabove described and provided for, current and to furnish to the United Mine Workers of America and to the Trustees hereinabove designated a monthly statement showing the full amount due hereunder for all coal produced for use or for sale from each of the several individual mines owned or operated by the said Operators signatory hereto. Payments to said Fund shall be made by check payable to "United Mine Workers of America Welfare and Retirement Fund of 1950" and shall be delivered and mailed to the office of said Fund located at 907 Fifteenth Street, N.W., Washington, D.C., or as otherwise designated by the Trustees.

It is stipulated and agreed by the contracting parties hereto that an annual audit of the Fund hereinabove described shall be made by competent authorities to be designated by the Trustees of said Fund. A statement of the results of such audit shall be made available for inspection of interested persons at the principal office of the Trust Fund and at such other places as may be designated by the Trustees.

Failure of any Operator signatory hereto to make full and prompt payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" in the manner and on the dates herein provided shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement.

This obligation of each Operator signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Operator during the life of this Agreement and it shall be deemed a violation of this Agreement if any mine to which this Agreement is applicable shall be sold, leased, sub-leased, assigned, or otherwise disposed of for the purpose of avoiding the obligation hereunder.

Action which may be required hereunder by the Operators for the appointment of a successor Trustee representing them, or which may be required in connection with any other matter hereunder, may be taken by those Operators who at the time are parties hereto, and authorization, approval, or ratification of Operators representing fifty-one percent (51%) or more of the coal produced for use or sale during the calendar year previous to that in which the action is taken shall be sufficient and shall bind all Operators.

B. It is hereby stipulated and agreed by the contracting parties with respect to the Fund created by the National Bituminous Coal Wage Agreement of 1947:

(1) The Operators signatory hereto agree to make payments into said Fund on or before March 15, 1950, on account of all coal produced for use or sale up to and including March 6, 1950, with respect to which payment has not heretofore been made, such payments to be on the basis heretofore made by said Operators under the National Bituminous Coal Wage Agreement of 1947 and the National Bituminous Coal Wage Agreement of 1948, whichever is applicable.

(2) The Operators signatory hereto hereby renounce and forever release any and all claim to or interest in payments made into the said 1947 fund.

(3) The Trustees appointed pursuant to this Agreement are hereby authorized and directed to accept into the new trust fund hereby created and to devote for the purposes hereinabove specified and enumerated, any and all trust funds remaining unexpended or unobligated in said 1947 trust fund.

(4) The parties hereto agree that the best interest of the beneficiaries of said trust fund would be served by having all unexpended or unobligated funds therein transferred as above provided, and agree that the Trustees thereof should transfer such funds to the new trust fund created by this Agreement.

C. It is stipulated, understood and agreed by the contracting parties hereto that the present practices with respect to wage deductions and their use for provision of medical, hospital and related services shall continue during the terms of this contract or until such earlier date or dates as may be agreed upon by the United Mine Workers of America and any Operator signatory hereto.

D. It is the intent and purpose of the contracting parties hereto that full cooperation shall by each of them be given to each other, the Trustees named under this Section and to all affected Mine Workers to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of this Fund.

APPENDIX J

EIGHTY-SIXTH MEETING OF THE BOARD OF TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, JANUARY 19, 1967

RESOLUTION NO. 68

WHEREAS, the United Mine Workers of America Welfare and Retirement Fund of 1950 has for one of its purposes the payment of benefits on account of death to the dependents of deceased employees of coal operators signatory to the National Bituminous Coal Wage Agreement of 1950, as amended, other than those exempted from said Agreement; and

WHEREAS, the Trustees desire to authorize the continuation of the payment of Widows and Survivors Benefits in the same amount as previously authorized by the Trustees to individuals whose applications have heretofore been approved by the Trustees, pursuant to the terms and conditions of Resolution No. 54, and continue to authorize Funeral Expense Benefits and Widows and Survivors Benefits under that Resolution to applicants whose applications are submitted as a result of deaths occurring prior to January 19, 1967; and

WHEREAS, the Trustees desire to establish a Funeral Expense Benefit of three hundred fifty dollars ($350.00) payable in the event a miner dies without any surviving dependents, and a Widows and Survivors Benefit of five thousand dollars ($5,000.00) as a result of the death of miners who at the time of death were regularly employed in a classified job in the bituminous coal industry by coal operators signatory to the National Bituminous Coal Wage Agreement of 1950, as amended, other than those exempted from said Agreement, and two thousand dollars ($2,000.00) in the event of the death of miners who at the time of death were receiving Trust Fund pensions and not employed outside the coal industry;

NOW, THEREFORE, BE IT RESOLVED, That the Di-

rector be and is hereby authorized to continue in full force and effect, payment of Widows and Survivors Benefits to applicants whose applications have heretofore been approved by the Trustees, pursuant to the terms and conditions of Resolution No. 54, and to continue to authorize Funeral Expense Benefits and Widows and Survivors Benefits under said Resolution No. 54 to all eligible applicants whose applications are made as a result of death of miners occurring prior to January 19, 1967, and that Resolution No. 54, adopted at the Fifty-Seventh Meeting of the Board of Trustees, for all other purposes is hereby rescinded and declared to be null and void.

BE IT FURTHER RESOLVED, That effective January 19, 1967, and applicable to all applications submitted as a result of death of miners occurring on or after January 19, 1967, the following regulations shall govern the payment of Funeral Expense Benefits and the payment of Widows and Survivors Benefits to dependent survivors of deceased miners, and shall be subject to amendment, revocation and revision at the discretion of the Trustees:

I. ELIGIBILITY

A. The following survivors of deceased miners who at the time of death, were dependent upon and were related to the deceased miners as follows, shall be eligible for Widows and Survivors Benefits subject to the provisions of Subparagraph B of this Paragraph I:

1. Widows who were living with or being supported by the deceased miners;
2. Dependent unmarried children of the deceased miners who were under twenty-two (22) years of age at date of death of the miners;
3. Parents of deceased miners who were dependent upon and were and had been living with the deceased miners in their households continuously for one (1) year next preceding date of death of the miners
4. Unmarried grandchildren of miners who were under twenty-two (22) years of age at date of death of the

miners and were dependent upon and had been living with the miners in their households and whose mothers and fathers must both have been deceased at date of death of the miners.

B. The dependent survivor or survivors of deceased miners listed in Subparagraph A of this Paragraph I are eligible for Widows and Survivors Benefits to the extent and in the manner provided in Subparagraph A of Paragraph II of this Resolution, provided the deceased miners at time of death, were:

1. Regularly employed in the coal industry as an employee in a classified job of an operator signatory to the National Bituminous Coal Wage Agreement of 1950, as amended; or
2. Unemployed for not more than one (1) year immediately following regular employment in the coal industry in a job described in Subparagraph B 1 of this Paragraph I; or
3. Unemployed and receiving workmen's compensation payments for an injury or occupational disease sustained while regularly employed in a classified job in the coal industry for an operator signatory to the National Bituminous Coal Wage Agreement of 1950, as amended; eligibility will continue while unemployed and receiving workmen's compensation payments and for one (1) year thereafter up to a maximum of four (4) years from date of injury or date of last employment.

C. The dependent survivor or survivors of deceased miners listed in Subparagraph A of this Paragraph I are eligible for Widows and Survivors Benefits to the extent and in the manner provided in Subparagraph B of Paragraph II of this Resolution provided, the deceased miners at time of death, were receiving retirement pension from the Trust Fund and were not employed outside the coal industry.

D. The burden of proving eligibility shall be upon the applicant; and the Trust Fund shall have full and final determination as to the competence and sufficiency of the proof submitted.

II. PAYMENT

A. The total amount payable to eligible dependent survivors as a result of the death of a miner who at time of death met the requirements set out in Subparagraph B of Paragraph I of this Resolution, shall be:

1. A Widows and Survivors Benefit of five thousand dollars ($5,000.00) payable in a first payment of three hundred fifty dollars ($350.00), payable on the date of approval of the application, and sixty (60) monthly installments, the first fifty-nine (59) of which shall be in the amount of seventy-five dollars ($75.00) each, and the sixtieth (60th) and final payment shall be in the amount of two hundred twenty-five dollars ($225.00), payment to begin on the first of the month following approval of the application.

B. The total amount payable to eligible dependent survivors as a result of the death of a miner receiving retirement pension from the Trust Fund as provided in Subparagraph C of Paragraph I of this Resolution, shall be:

1. A Widows and Survivors Benefit of two thousand dollars ($2,000.00) payable in a first payment of three hundred fifty dollars ($350.00), payable on the date of approval of the application, and twenty-two (22) monthly installments of seventy-five dollars ($75.00) each, payment to begin on the first of the month following approval of the application.

C. The Widows and Survivors Benefits payment is made, without duplication, to the dependent survivor or survivors of deceased miners in the classification listed in Subparagraph A of Paragraph I of this Resolution, in the

United States of America, its territories or possessions, or the Dominion of Canada.

D. No payment of any Widows and Survivors Benefit installment provided for by Subparagraphs A and B of this Paragraph II shall be made after the death of the eligible dependent survivors.

E. In the event there be no person in the relationship and/or dependency classifications listed in Subparagraph A of Paragraph I of this Resolution who can qualify for the Widows and Survivors Benefits as a result of the death of a miner who at time of death met the requirements of Subparagraph B or Subparagraph C of Paragraph I of this Resolution, there is hereby established a Funeral Expense Benefit in the amount of three hundred fifty dollars ($350.00) to be paid to the local union of the United Mine Workers of America in which deceased held membership, or to any person, who paid or became liable to pay deceased miner's funeral expense provided, however, that payment shall not be made by the Trust Fund to a funeral director, mortician, or undertaking establishment, but must be paid directly to the local union of the United Mine Workers of America or to the person assuming the obligation.

F. No Funeral Expense Benefit or Widows and Survivors Benefits payment shall be made to any person who voluntarily contributed to the death of the miner.

III. APPORTIONMENT

A. The Widows and Survivors Benefits may or may not be apportioned between two or more dependent survivors classified in Sub-paragraph A of Paragraph I of this Resolution, as the circumstances may justify.

IV. EVIDENCE REQUIRED

A. Proof of death

1. A certified copy of an official death certificate shall

constitute proof of death, and date thereof.

B. Dependency

1. The material elements of factual dependency must be clearly and definitely established;
2. Dependency or support within the meaning of this Resolution is intended to be more than intermittent gifts from the deceased; it must be support of a regular and substantial nature.

V. FALSE STATEMENTS

A. Any person who knowingly and willfully falsifies any record or makes any false representation or statement or withholds any information, in order to secure for himself or for any other person, Funeral Expense Benefit or Widows and Survivors Benefits from the Trust Fund, shall be barred from receiving any benefits from the Trust Fund; and in any case where payment has been made as a result of such misrepresentation or omission, the recipient or recipients of benefits will be required to reimburse the Trust Fund in the amount he or they received from the Trust Fund.

BE IT FURTHER RESOLVED, That moneys held by the Trust Fund for Funeral Expense Benefits or Widows and Survivors Benefits do not constitute a part of the deceased miner's estate which can be claimed by his administrator, executor, or heirs, unless such person or persons are otherwise eligible under the terms and conditions of this Resolution, nor are said moneys equivalent to the proceeds of an insurance policy in which a beneficiary may be designated; and no miner may, during his lifetime, assign, devise or will moneys from this Trust Fund, and any attempt so to do shall be void.

BE IT FURTHER RESOLVED, That the Director of the United Mine Workers of America Welfare and Retirement Fund of 1950 is hereby authorized and directed to activate this Resolution in accordance with its terms and conditions, and is empowered to do all things, to perform all necessary acts, and

to require the submission of evidence, in order to effectuate the purposes of this Resolution.

APPENDIX K

EIGHTY-SIXTH MEETING OF THE BOARD OF TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, JANUARY 19, 1967

RESOLUTION NO. 69

WHEREAS, the United Mine Workers of America Welfare and Retirement fund of 1950 has for one of its purposes the payment of benefits and expenditures for hospital and medical care rendered to employees, their wives and certain dependents, including the wives and certain dependents of deceased employees, of coal operators signatory to the National Bituminous Coal Wage Agreement of 1950, as amended, other than those exempted from said Agreement; and

WHEREAS, the Trustees desire to raise the eligibility age of unmarried dependent children and grandchildren of miners, and to continue the payment for hospital and medical care for persons currently eligible, pursuant to the terms and conditions of Resolution No. 52;

NOW, THEREFORE, BE IT RESOLVED, That the Director be and is hereby authorized to continue the payment for hospital and medical care for persons who have previously been approved for such benefits, pursuant to the terms and conditions of Resolution No. 52, in full force and effect, subject to the regulations hereinafter provided, and that effective January 19, 1967, Resolution No. 52, adopted at the Fifty-Seventh Meeting of the Board of Trustees, for all other purposes is hereby rescinded and declared to be null and void.

BE IT FURTHER RESOLVED, That effective January 19, 1967, the following regulations shall govern the payment of benefits and expenditures for hospital and medical care rendered to employees, their wives and dependents, including the wives and dependents of deceased employees, of coal operators signatory to the National Bituminous Coal Wage Agreement of

1950, as amended, other than those exempted from said Agreement, and such regulations shall be subject to amendment, revocation and revision at the discretion of the Trustees:

I. ELIGIBILITY

A. The following persons shall be eligible for benefits herein provided for hospital and medical care, subject to the provisions of Paragraph B of this Paragraph I:

1. Miners and their wives who are living with or being supported by such miners;
2. Dependent unmarried children of miners who are under twenty-two (22) years of age;
3. Parents of miners and their wives who are and have been dependent upon and living with the miners in their households continuously for one (1) year next preceding the application for benefits herein provided;
4. Unmarried grandchildren of miners who are under twenty-two (22) years of age and dependent upon and are and have been living with the miners in their households and whose mothers and fathers must both be deceased;
5. Unremarried widows and unmarried dependent children under twenty-two (22) years of age of deceased miners described in Subparagraph B of this Paragraph I as long as they are the recipients of Widows and Survivors Benefits provided in Paragraph II of Resolution No. 68.

B. The miners and their dependents listed in Subparagraph A of this Paragraph I are eligible for hospital and medical care in the manner and to the extent provided in Subparagraph A of Paragraph II of this Resolution provided, the miners are, or the deceased miners at time of death, were:

1. Regularly employed in the coal industry as an employee in a classified job of an operator signatory to

the National Bituminous Coal Wage Agreement of 1950, as amended; or

2. Unemployed for not more than one (1) year immediately following regular employment in the coal industry in a job described in Subparagraph B 1 of this Paragraph I; or
3. Receiving retirement pension from the Trust Fund and not employed outside the coal industry; or
4. Unemployed and receiving workmen's compensation payments for an injury or occupational disease sustained while regularly employed in a classified job in the coal industry for an operator signatory to the National Bituminous Coal Wage Agreement of 1950, as amended; eligibility will continue while unemployed and receiving workmen's compensation payments and for one (1) year thereafter up to a maximum of four (4) years from date of injury or date of last employment.

C. The burden of proving eligibility shall be on the applicant; and the Trust Fund shall have full and final determination as to the competence and sufficiency of the proof submitted.

II. BENEFITS

A. Extent of Benefits

The following benefits shall be made available to the extent and in the manner determined by the Director:

1. Hospitalization
   a. In-patient care
   b. Out-patient care
2. Physician care
   a. Medical care in the hospital
   b. Specialist service
3. Prosthetic appliances
4. Drugs and medical supplies

III. False Statements

A. Any person who knowingly and willfully falsifies any record or makes any false representation or statement or withholds any information, in order to receive or continue to receive for himself, or for any other person, hospital and medical benefits from the Trust Fund, shall be barred from receiving benefits from the Trust Fund; and in any case where payment has been made as the result of such misrepresentation or omission the individual involved will be required to reimburse the Fund in the amount of such payment.

BE IT FURTHER RESOLVED, That hospital and medical care benefits provided under this Resolution, will not be authorized for any person sixty-five (65) years of age or over, who is otherwise eligible under the terms and conditions of this Resolution, where such person is not enrolled in the Medical Insurance coverage of Medicare; and that any person sixty-five (65) years of age or over who is enrolled in the Medical Insurance coverage of Medicare, may receive hospital and medical care benefits provided under this Resolution only to the extent such benefits are not provided for under Medicare.

BE IT FURTHER RESOLVED, That the Director is hereby authorized and directed to activate this Resolution in accordance with its terms and conditions and is empowered to do all things and to perform all acts which may be necessary in order to effectuate the purposes of this Resolution.

APPENDIX L

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1974

* * * *

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts described in Sections (b) and (c) of this Article.

A summary of the benefits to be provided appears immediately following this Article.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust shall assume the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust, and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from either the 1950 Benefit Trust or the 1974 Benefit Trust.

The general purpose of the plans established by this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; and health care and financial support for eligible disabled miners, miners' widows and surviving dependents as provided by each of the Trusts and Plans established under this Article.

It is agreed that the trusts established in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and they shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

Effective December 6, 1974, the name of the 1950 Fund is changed to the United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust"). The 1950 Pension Trust is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund are hereby amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America, 1950 Benefit Plan and Trust ("1950 Benefit Trust"). The 1950 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits

will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) Effective December 6, 1974, there is established a pension trust to be known as the United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust"), which is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and is effective December 6, 1974.

(2) Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust"). The 1974 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts established in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal)

shall contribute to the Trusts established in this Article the amounts specified below based on cents per hour worked by each of the Employer's Employees who perform classified work under this agreement:

(i) Into the 1950 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 56.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 52.4¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 55.4¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 18.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 18.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 19.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 19.2¢ per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, 7.6¢ per ton on each such ton, plus 63.0¢ per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 7.6¢ per ton on each such ton, plus 66.0¢ per hour on each such hour worked; and

(iv) Into the 1974 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 70.8¢ per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, 77.0¢ per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 88.0¢ per hour on each such hour worked;

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974 Benefit Trust are not established on the date that any contribu-

tions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hour worked contributions converted to tonnage equivalent):

(i) Into the 1950 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 56.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 52.4¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 55.4¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 18.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 18.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 19.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 9.4¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 38.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 38.9¢ per ton on each such ton; and

(iv) Into the 1974 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 34.8¢ per ton on each such ton; for the period beginning December 6,

1975, and ending December 6, 1976, 37.2¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 41.7¢ per ton on each such ton.

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974 Benefit Trust are not established on the date that any contributions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

Definition of Hours Worked

Hours of work for purposes of Employer contributions to the various Health and Retirement Trusts shall include all hours worked, or fractions thereof, by Employees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of Employer contributions to the Trusts as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making Employer contributions to the Trust.

At any time during the term of this Wage Agreement, the Employers and the Union may agree upon a reallocation of contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which will increase the cents per ton to be contributed into the 1950 Pension Trust and correspond-

ingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents-per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the contributing Employers of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) No monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(b) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(c) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(d) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts; and

(e) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any substantial reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the

cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

(2) The Trustees are hereby directed to establish a royalty rate or rates for bituminous coal which is recovered from slurry ponds, sludge piles, and other coal refuse, which is sold during the life of this Agreement, and such royalty rate will be paid on each ton of such coal recovered for use or for sale. Royalty rates currently being paid for coal recovered from slurry ponds, sludge piles and other coal refuse shall remain in effect unless and until changed by the Trustees. All royalties payable by Employers pursuant to this paragraph shall be divided among the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust in proportion to the total contribution paid to each such Trust by all Employers for the month preceding the month in which such royalty is due and payable.

(3) The obligation under this Section of any Employer signatory hereto shall be to contribute the amounts specified in this Section.

(4) The obligation to make payments to the Trusts specified in this Article shall become effective on the dates specified in the respective Subdivisions (i) through (v) of this Section, and the first payments are to be made on the 10th day of each month after such specified dates, and thereafter continuously on the 10th day of each succeeding calendar month.

(5) It shall be the duty of each of the Employers signatory hereto to keep current said payments due to the Trusts, and to furnish to the International Union, United Mine Workers of America and to the Trustees of those Trusts a monthly statement showing on a mine-by-mine basis the full amounts due hereunder and the tons of coal produced, procured or acquired for use or for sale and the hours worked with respect to which the amounts are payable. Payments to those Trusts shall be

made by check payable, as appropriate, to:

"Trustees of the United Mine Workers of America 1950 Pension Trust"
"Trustees of the United Mine Workers of America 1950 Benefit Trust"
"Trustees of the United Mine Workers of America 1974 Pension Trust"
"Trustees of the United Mine Workers of America 1974 Benefit Trust"

The Trustees are hereby authorized to require each signatory Employer to make payment of all contributions to the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust by a single check made payable in such manner as may be specified by the Trustees.

(6) Payments shall be delivered or mailed to the office of the Trusts currently located at 2021 K Street, N.W., Washington, D.C. 20006, or as otherwise designated by the Trustees of those Trusts.

(7) Failure of any Employer signatory hereto to make full and prompt payments to the Trusts specified in this Article in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement and it shall be deemed a violation of this Agreement, if any mine, preparation plant or other facility to which this Agreement is applicable shall be sold, leased, subleased, assigned, or otherwise disposed of for the purpose of avoiding any of the obligations hereunder.

(8) Each Employer agrees to give proper notice to the President of the local union at the mine by the 18th day of each month that the Employer has made the required payment to the Trusts for the previous month, as required by this Article, or is delinquent in such payment, such notice to set forth the amount paid to the Trusts, or the amount of the delinquency,

the tonnage produced and the hours worked with respect to the mine or mines under the jurisdiction of such local union.

(9) Title to all the monies paid into and/or due and owing to the Trusts specified in this Article shall be vested in and remain exclusively in the Trustees of those Trusts. It is the intention of the parties hereto that those Trusts shall constitute irrevocable trusts and that no benefits or money payable from those Trusts shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(10) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trusts pursuant to these agreements (which monies might otherwise have been paid for wages or other benefits to such Employees), in consideration of the benefit which is provided by the pooling of such monies into common funds to be applied to the benefit of the designated beneficiaries pursuant to the Trust instruments.

(11) Any judgment obtained by the Trustees of the Trusts established pursuant to this Agreement for a default giving rise to damages accruing to more than one of the Trusts established hereunder shall be allocated by the Trustees among such Trusts in proportion to the amounts owing to each which gave rise to such judgment.

Section (e) **Responsibilities and Duties of Trustees**

(1) Each Trust shall be administered by a Board of three Trustees, one of whom shall be appointed by the Employers; one of whom shall be appointed by the Union; and one of whom shall be a neutral party, selected by the other two. The Trustees, or their duly appointed successors, shall serve for the duration of the Agreement and as long thereafter as the

proper continuation and administration of the Trusts shall require. The representative of the Employers on the Board of Trustees shall be C. W. Davis, Bluefield, West Virginia; the representative of the Union on said Board of Trustees shall be Harry Huge, Washington, D.C.; and Paul R. Dean, Washington, D.C., is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Trusts.

(2) It is the intent and purpose of the contracting parties that full cooperation shall be given by each of them to one another, to the Trustees provided for under this Article, and to all affected mine workers, to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trusts and Plans.

(3) Action which may be required by the Employers in connection with any matter hereunder, including but not limited to the appointment of a successor Trustee, may be taken by those Employers who are parties to this Agreement, and authorization, approval or ratification of Employers representing fifty-one per cent (51%) or more of the total contributions made to the Trusts during the calendar year (or such shorter period which may have elapsed after the effective date of this Agreement) previous to that in which the action is taken shall be sufficient and shall bind all Employers.

(4) All covenants, rights and obligations accruing to the Trusts, and Benefit Plans, and the Trustees of the Pension and Benefit Trusts and Plans, and all breaches, violations and/or defaults of any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements, or Pension Plans, shall be enforced by the Trustees, at their discretion, through any and all available legal means, without first exhausting the grievance and arbitration procedures set forth in this Agreement, and such Trustees shall determine whether any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements or Pension Plans has been breached, violated or is in default.

Section (f) **Audits, Reports and Notices**

(1) It is agreed by the contracting parties that annual independent audits of the Trusts shall be made by independent certified public accountants to be designated by the Trustees of the Trusts. A statement of the results of such audits shall be sent to the contracting parties and shall be made available upon written request to any working or retired miner or to any beneficiary either by mail or at the principal office of the Trusts, or at such other place as may be designated by the Trustees.

(2) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under Section (d) of this Article, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(3) A complete accounting, on a mine-by-mine basis, of contributions received by the Trusts under this Article shall be furnished by the Trustees, at least on a quarterly basis, to the International Union. Such an accounting will also be supplied to the District and Local offices of the Union with respect to the mine or mines under their jurisdiction. Such accountings shall include tonnages of coal produced and hours worked with respect to which contributions were paid, together with an identification of any period or periods in which contributions were delinquent, showing the amounts of such delinquencies. The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts and Locals of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(4) Upon the written request of any International, District or Local officer of the Union, the Trustees shall make available within seven (7) days of receipt of such request an up-to-date

accounting of contributions made and delinquencies outstanding, in respect to any mine or related facility with respect to which such officer has union jurisdiction.

Section (h) **Administration of Trusts**

(1) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trusts and Plans.

(2) The Trustees shall respond to all written requests for information, applications, and other communications from beneficiaries within 15 working days from their receipt at the office of the Trusts. A response from the Trustees may be either a telephonic communication or a letter acknowledging receipt of such communication from the beneficiary. A pension application must be initially approved or denied within 12 weeks of the receipt of the application. The foregoing shall not apply in the event of delays caused by conditions beyond the control of the Trustees.

(3) Within six months after the effective date of this Agreement, the Trustees shall develop a suitable plan for policing and monitoring the rolls of those entitled to benefits from the Trusts. On at least a quarterly basis, the Trustees shall have available a complete listing of current beneficiaries, identified by UMWA district and local union jurisdiction, if applicable. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trusts has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for health care or other benefits, the Trustees shall take prompt action to correct the situation.

(4) Within six months after the effective date of this Agreement, the Trustees shall conduct a comprehensive review of procedures for monitoring covered medical expenses and shall report to the contracting parties with respect to insuring an

effective system of cost controls, especially regarding any fees charged by physicians, hospitals, clinics, pharmacists or others which appear to be excessive. The Trustees shall take such steps as they deem appropriate to improve such procedures, and shall report to the contracting parties on such activities regularly thereafter, at least annually.

(5) The Trustees are authorized, upon approval by the Employers and the Union, to make such changes in the Plans and Trusts hereunder as they may deem to be necessary or appropriate.

They are also authorized and directed, after adequate notice and consultation with the Employers and Union, to make such changes in the Plans and Trusts hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to conform the terms of each Plan and Trust to the requirements of ERISA, or any other applicable federal law, and the regulations issued thereunder;

(b) to obtain determination letters from the Internal Revenue Service that the two Pension Trusts will each meet the requirements of Section 401 of the Internal Revenue Code and the Trusts thereunder will be exempt under Section 501(a) of such Code and that the two Benefit Trusts will be exempt under Section 501(c)(9) of such Code;

(c) to establish the deductibility for income tax purposes of any and all contributions made by the signatory operators to the Pension Trusts and Benefit Trusts as paid or incurred; or

(d) to comply with all applicable court or government decisions or ruling.

SUMMARY OF PRINCIPAL PROVISIONS, UMWA HEALTH AND RETIREMENT BENEFITS

(1) PENSIONS FOR MINERS WHO ARE ALREADY RETIRED:

Formerly at $150 per month, these pensions are to be increased according to the following schedules:

(a) For retired miners who receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $215 per month, and a third increase two years after the effective date of this Agreement to $225 per month.

(b) For retired miners who do not receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $225 per month, and a third increase two years after the effective date of this Agreement to $250 per month.

Any pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage.

(2) PENSIONS FOR MINERS WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT BUT PRIOR TO JANUARY 1, 1976:

A working miner who retires after the effective date of this Agreement but prior to January 1, 1976 and who is eligible for a pension will receive the same benefit levels as set forth in paragraph (1).

(3) PENSIONS FOR MINERS WHO RETIRE IN 1976:

A working miner who retires at any time in 1976 and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon an entirely new plan which provides credit for all years worked. Full credit is provided for

years worked in mines of signatory Employers; partial credit is provided for years worked in mines of non-signatory Employers.

The earliest retirement age under this Plan will be 55. A miner may retire at 55 with 10 or more years of signatory employment.

Pension credits under the new plan are increased as a miner accumulates more years of employment. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

In the first year of this pension plan (1976), the maximum credits are as follows:

- $12 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $12.50 per month multiplied by the years of signatory employment for the second 10 years of employment.
- $13 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for each year over 30 years of employment.

To estimate your pension under the terms of this new Plan, see the table on page 51.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

As a hedge against the anticipated increase in the cost of living, miners who retire under the new Plan during 1976 will receive a $10 per month increase in 1977.

(4) PENSIONS FOR MINERS WHO RETIRE IN 1977:

Benefits under the new Plan will be increased for miners retiring in 1977. Subject to the same terms as paragraph (3),

the maximum benefit schedule applicable in 1977 will be as follows:

- $12.50 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $13 per month multiplied by the years of signatory employment for the second 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $14 per month multiplied by the years of signatory employment for each year over 30 years of employment.

If you retire in 1977, estimate your pension by referring to the table on page 51.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

(5) PENSIONS FOR DISABLED MINERS:

A miner who becomes permanently and totally disabled as the result of a mine accident after the effective date of this Agreement will become eligible for pension benefits according to the following schedule:

(a) If a miner has less than ten years of signatory employment at the time of his disabling accident, he will receive a $125-per-month pension for life, and will retain his Health Services card for life.

(b) If a miner has ten years or more of signatory employment at the time of his disabling accident, he will receive an increased pension based upon the years of credited employment which he has accumulated at the time of his disabling accident. If the disabling accident occurs after the effective date of this Agreement but prior to January 1, 1976, the initial pension payment will be $125 per month, but such amount will, effective January 1, 1976, be increased to the pension levels at age 62 shown in the table on page 51. If the disabling accident occurs on or

after January 1, 1976, the initial pension levels at age 62 shown on page 51 will apply immediately. (For example, a miner disabled during this period of time who is age 44 and has 22 years of employment, would be eligible effective January 1, 1976 for a disability pension of $271 per month).

If the disabling accident occurs in 1977, the higher schedule of benefits shown in the table on page 51 will apply. (In this case, the example Employee would receive $282 per month.)

(c) A miner who was permanently and totally disabled as the result of a mine accident after May 29, 1946, but prior to the effective date of this Agreement in a then signatory mine, will be eligible, upon application and certification of disability, for a pension of $125 per month for the rest of his life, and will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(6) PENSIONS FOR WIDOWS:

The new Plan provides, for the first time, for widows' pensions. Benefits will ordinarily be payable according to the following schedule:

(a) If a miner working on or after January 1, 1976, becomes eligible for a pension at any time thereafter, his widow will be entitled to receive a Surviving Spouse pension equal to 50 per cent of his pension until her death; she will retain a Health Services card until her death or remarriage.

(b) If, on or after January 1, 1976, a working miner dies (regardless of cause) and would have been eligible for an immediate pension had he retired on the date of his death, his widow will be eligible for a pension equal to 50 per cent of the pension he would have received, and will receive his pension until her death; she will retain a Health Services card until her death or remarriage.

(7) DEFERRED VESTED PENSION:

If a working miner terminates his employment for any reason after completing 10 years of signatory employment, and before age 55, he will be eligible to receive a pension at age 62, or an actuarially reduced pension at any time after 55. The widow's pension described in paragraph (6) does not apply to the widow of a miner receiving a deferred vested pension.

(8) BASIC DEATH BENEFITS:

Under the terms of this Agreement, basic death benefits are substantially increased, and will be payable according to the following schedule:

(a) Upon the death of a working miner with one to five dependents, a death benefit of $7,500 will be paid to his widow, or, in the absence of a widow, to his surviving dependents.

(b) Upon the death of a working miner with more than five dependents, a death benefit of $8,000 to $10,000 will be paid to his widow (or, in the absence of a widow, to his surviving dependents), based on an incremental payment of $500 per dependent.

(c) Upon the death of a working miner with no dependents, a death benefit of $2,000 will be paid to his nearest designated survivor; except that if the cause of death was any accident, the death benefit will be $7,500.

(d) Upon the death of a pensioned miner with dependents, a death benefit of $2,500 will be paid to his widow, or, in the absence of a widow, to his surviving dependents.

(e) Upon the death of a pensioned miner with no dependents, a death benefit of $2,000 will be paid to his nearest designated survivor.

(9) DEATH BENEFITS WHEN DEATH IS THE RESULT OF A MINE ACCIDENT:

If, after the effective date of this Agreement, a miner is killed in a mine accident, his widow will receive, in addition to the basic death benefit described above, a one-time cash pay-

ment of $10,000 plus $100 per month until her death or remarriage. These benefits will be in addition to any pension to which she may be entitled. In the event that there is no surviving spouse and there is one or more surviving dependent children, the above benefits will be payable to unmarried dependent children until age 22.

(10) HEALTH SERVICES CARD:

Regulations already in effect governing eligibility for Health Services cards are amended to include the following:

(a) A miner who (1) has completed 20 years of credited service, including the required number of years of signatory service, (2) has not attained age 55, and (3) is disabled and receiving Social Security disability insurance benefits will be eligible for a Health Services card.

(b) A working miner who becomes totally disabled due to a compensable disability within 4 years of the date he would be eligible for retirement shall be entitled to a Health Services card while so disabled and during the period for which Workmen's Compensation payments are applicable.

(c) The widow of a miner who retired and received a pension at any time on or after May 29, 1946, will receive, upon approval of application, a Health Services card until her death or remarriage.

(d) The widow of a miner who became permanently and totally disabled as the result of injuries suffered in a mine accident at any time on or after May 29, 1946, will, upon approval of application, receive a Health Services card until her death or remarriage.

(e) The widow of a miner who is currently receiving a pension, or of a miner who receives a pension (other than a deferred vested pension based on less than 20 years of credited service) at any time after the effective date of this Agreement will upon his death retain a Health Services card until her death or remarriage.

(f) Disabled or retarded children of Health Services

cardholders will be covered for life, so long as a surviving parent holds the card.

(11) HEALTH CARE:

All current programs administered by the UMWA Health and Retirement Funds will be carried forward and expanded as required to cover additional beneficiaries.

The foregoing summary is subject to the complete description of all benefits provided pursuant to this Agreement, which will be found in the Pension and Health Plans and Trusts adopted as part of this Agreement and incorporated herein by reference under the title "UMWA Health and Retirement Benefits." In case of conflict, the provisions of the Plans and Trusts shall be governing.

APPENDIX M

UNITED MINE WORKERS OF AMERICA 1950 BENEFIT PLAN AND TRUST

INTRODUCTION AND STATEMENT OF PURPOSE

Pursuant to Article XX of the Wage Agreement, there is hereby established a benefit plan and trust to be known as the "United Mine Workers of America 1950 Benefit Plan and Trust" (hereinafter referred to as "1950 Benefit Trust") for the purpose of making benefit payments pursuant to the provisions hereof.

* * * *

ARTICLE II

* * * *

E. *Surviving Spouse and Dependents of Deceased Miners*

Health benefits under Article III shall be provided to (1) any unmarried surviving spouse and (2) her unmarried surviving dependent children as defined in sub-paragraphs (2) and (5) of paragraph D, of a miner who died:

(1) As a result of a mine accident occurring on or after May 29, 1946 while the miner was working in a classified job for an Employer;

(2) At a time he was entitled to receive health benefits pursuant to paragraphs B, C(1), C(2) [except as limited in C(2) (b)], C(3), or C(4) of this Article II;

(3) Prior to the effective date of this Plan, and on or after May 29, 1946 at a time when he was receiving a retirement or disability pension under the eligibility rules then in effect of the United Mine Workers of America Welfare and Retirement Fund of 1950 or its predecessors;

(4) Prior to the effective date of this Benefit Trust, and on or after May 29, 1946 at a time when he would have been entitled to receive health benefits pursuant to paragraph C(4) of this Article II if this Benefit Trust had been in effect at the time of death. Any children under age 22 shall

not be entitled to receive health benefits under this paragraph E if they are employed and living outside the household of the surviving spouse or immediate family of the deceased miner.

Health benefits shall continue for a surviving spouse (and dependent children) until her death or remarriage except that the surviving spouse of a miner who died while entitled to health benefits only under paragraph C(1) shall not be entitled to the continuation of health benefits beyond the period in which death benefits are being paid.

At the death of a miner described in paragraph E(1) above, the health benefits will be continued for the unmarried children until they attain age 22, even if there is no surviving spouse or if the surviving spouse dies before they attain age 22.

If, at the death of a miner described in paragraphs (2), (3) or (4) above, there is no surviving spouse, or if the surviving spouse dies during any period in which death benefits are being paid, health benefits will be continued for the unmarried children during the period in which death benefits are being paid but in no event beyond their attaining age 22.

* * * *

ARTICLE III

The 1950 Benefit Trust is an irrevocable trust created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947 and a voluntary employees' beneficiary association which shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments to participants, beneficiaries and dependents defined herein from principal or income or both, as follows:

A. The Trustees shall continue to provide the level of health benefits and/or services as in effect November 12, 1974, in the various areas in the industry, provided, however, that the Trustees shall not be limited in their administration of the Trust from (1) providing improved services under changing

methods of the delivery of health care as long as any such action does not materially increase the cost to the Trust or (2) taking such other actions which in their best judgment will preserve the financial integrity of the Trust.

B. Death benefits for a participant who is (1) receiving pension payments under the 1950 Pension Trust and is eligible for health benefits or (2) has made application for and is eligible to receive such payments and benefits shall be: (i) $2500 for such a participant who at the time of his death leaves dependents, and (ii) $2000 for such a participant who at the time of his death does not leave any dependents.

It is the intent of the parties hereto that the contributions made to this Trust will provide death benefits and health care for the beneficiaries and their eligible dependents and at the same time accumulate a reserve which in time will be sufficient to finance such benefits with no further contributions.

In the event the assets of the 1950 Benefit Trust become insufficient to pay the benefits provided under the Plan, the benefits may be suspended or reduced to amounts which, in the judgment of the Trustees, can be paid from the assets of the 1950 Benefit Trust.

The monies to be paid into said 1950 Benefit Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money.

participant referred to in Section B of Article II hereof who dies at a time when he has no dependents eligible for death benefits;

(7) In addition to any death benefit provided under subsection (4), the surviving spouse of any participant who dies as a result of a mine accident occurring while employed as an employee in a classified job for an Employer shall be entitled to receive a lump-sum cash payment of $10,000 and shall also be entitled to receive a monthly benefit of $100 per month for life or until remarriage, beginning with the first month after the date of death. In the event that there is no surviving spouse and there is one or more surviving dependent children, the foregoing benefits will be payable to the unmarried dependent children until age 22.

(8) The Trustees shall assist in the administration of the Sickness and Accident Plan established pursuant to Article XI of the Wage Agreement, and shall pay from the trust the administrative expenses incurred in connection with such plan.

C. In the event the assets of the 1974 Benefit Trust become insufficient to pay the benefits provided hereunder, the benefits may be suspended or reduced to amounts which, in the judgment of the Trustees, can be paid from the assets of the 1974 Benefit Trust.

D. The monies to be paid into said 1974 Benefit Trust shall not constitute or be deemed wages due to the individual employee, nor shall said monies in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money.

APPENDIX N

STATUTES INVOLVED

Section 302(c)(5) of the Labor-Management Relations Act, 1947, 29 U.S.C. § 186(c)(5), provides:

* * * *

(c) The provisions of this section shall not be applicable . . .

(5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of

the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; . . . .

Section 2(3) of the National Labor Relations Act, 29 U.S.C.§ 152(3), provides:

* * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by an other person who is not an employer as herein defined.

Section 8(b)(3) of the National Labor Relations Act, 29 U.S.C. § 158(b)(3), provides:

* * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—. . . .

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title; . . . .